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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

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BEFORE THE HONORABLE WILLIAM B. SHUBB, JUDGE

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR. S-03-00384

ALLEN HARROD, aka Isaac,
MICHAEL LA BRECQUE, aka Joseph,
and JULIETTE LA BRECQUE, aka
Mary,

Defendants.

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REPORTER'S TRANSCRIPT

JURY TRIAL

VOLUME 2

WEDNESDAY, JANUARY 2, 2008

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Reported by: KATHY L. SWINHART, CSR #10150

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1 APPEARANCES

2

3 For the Plaintiff:

4 MCGREGOR W. SCOTT
United States Attorney
5 501 I Street, Suite 10-100
Sacramento, California 95814
6 BY: LAUREL D. WHITE
ELLEN V. ENDRIZZI
7 Assistant U. S. Attorneys

8

For Defendant Michael LaBrecque:

9

DANIEL J. BRODERICK
Federal Defender
10 801 I Street, 3rd Floor
11 Sacramento, California 95814
BY: CARO MARKS
12 Senior Litigator

13

For Defendant Juliette LaBrecque:

14

JAN DAVID KAROWSKY
15 716 19th Street, Suite 100
Sacramento, California 95811
16

17 For Defendant Allen Harrod:

18 MOSS & LOCKE
555 University Avenue, Suite 170
19 Sacramento, California 95825
BY: BRUCE LOCKE
20

21 Also Present:

22 MICHAEL LA BRECQUE

23 JULIETTE LA BRECQUE

24 ALLEN HARROD

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SACRAMENTO, CALIFORNIA

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WEDNESDAY, JANUARY 2, 2008, 9:00 A.M.

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(The following proceedings were had outside
the presence of the prospective jurors:)

THE CLERK: Calling case Cr. S-03-384, the United
States versus Michael LaBrecque, et al.

THE COURT: All defendants appear to be present with
counsel.

MS. MARKS: Good morning, Your Honor.

THE COURT: Good morning. I'm informed that we're
still waiting for two jurors, hopefully they will be here.
But in the meantime, I just wanted to go over with you the
procedure. We're going to bring all of them in here. As I
was looking at your questionnaires, there is very little that
I could ask them which would ordinarily be part of my general
questioning that is not already contained in your
questionnaires, so I don't know exactly what subjects you
wanted me to discuss with them before we have them come back
individually.

Were there any subjects that were not addressed in the
questionnaires that any of you wanted me to ask them about
before we talked to them individually?

MR. KAROWSKY: Your Honor, from the defense I don't
think there's anything. I think the Court's absolutely
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accurate that we have all the information that we really need.
It would be, I believe, our position that if the Court is
going to give a statement or some -- whatever the Court -- by
way of a statement to the twenty, that would be all we're

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5 asking the the Court to do and then leave it up to counsel to
6 do the questioning for cause.

7 And the government has indicated they have no problem
8 with alternating with the defense going first and then they
9 follow, and then the next juror they go first and we follow is
10 my understanding.

11 MS. WHITE: That's correct, Your Honor.

12 MR. KAROWSKY: And that's fine with the defense.

13 THE COURT: All right. The general statement that I
14 make to them could simply be to explain the procedure that
15 we're going to follow. I ordinarily have the government read
16 the indictment, but I noticed in question No. 44 here or 45
17 you briefly explain the charges to the jurors, and I don't
18 know that there's any more necessary as part of this process.

19 MS. WHITE: I would concur, Your Honor.

20 MR. LOCKE: Right, I agree, Your Honor.

21 One thing, though, we -- the defense discussed was we
22 would like, after they come in individually, if you would --
23 when we're finished with the questioning, if you would excuse
24 them, tell them to sit outside, and then we would discuss with
25 you whether we have a challenge for cause on the basis. Then

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1 your Courtroom Deputy could, when she goes to get the next
2 juror, tell the one that we just saw either that she's excused
3 or she can go down to the jury room and do whatever they do
4 there or she's to come back on the 15th or whatever the day
5 is.

6 THE COURT: All right. If they're excused, they'll

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7 just be excused altogether.
8 MR. LOCKE: Right.
9 THE COURT: In other words, they won't come back for
10 this trial at all.
11 MR. LOCKE: That's right.
12 MS. WHITE: Correct.
13 THE COURT: And I don't have a convenient place for
14 them on this floor if all twenty of them are going to remain,
15 so I'm thinking that I can keep maybe twelve and have them
16 stay in the jury deliberation room while we wait to call them
17 and then bring the rest of them back this afternoon.
18 MR. LOCKE: That's fine with us.
19 MS. WHITE: That's fine, Your Honor.
20 Your Honor, the one thing that was not attached to the
21 questionnaire, as I was going through the different
22 questionnaires, it became very obvious after the first one
23 that there was no witness list that they could then --
24 THE COURT: Oh, really?
25 MS. WHITE: There was not. So I --

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1 THE COURT: That's funny. Because they checked the
2 box as if they had read a witness list, so I assumed that they
3 had.
4 MS. WHITE: Well, some of them indicated some obvious
5 confusion, and so that was an oversight on our part. But I do
6 have the witness list here which, you know, I'm prepared to
7 read.
8 THE COURT: All right. I just looked at some, and it

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9 said do you know any of the potential witnesses, and here this
10 one juror he said no. I assumed that he had read the exhibit
11 list. So we'll do that, then.

12 MS. WHITE: Okay.

13 MS. ENDRIZZI: Your Honor, they were told when we
14 realized this when we gave out the questionnaire. So you'll
15 see that some of them skipped it, they knew that no witness
16 list was going to be attached.

17 THE COURT: All right.

18 MR. KAROWSKY: Your Honor, the only other thought I
19 had is I saw that the agent had -- was using the conference
20 room. I just want to make sure there's no materials in the
21 conference room that we looked at earlier --

22 THE COURT: All right. Would one of you, Ms. Endrizzi
23 or -- there are two conference rooms back there, so we'll just
24 use the one that the agent is not using. And I'll have the
25 court security officer show the jurors to that room, so you

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1 can show the security officer which room we're using.

2 MS. MARKS: Your Honor, is this voir dire open to the
3 public? Is this a public proceeding?

4 THE COURT: Any reason why not?

5 MS. MARKS: Well, I think there's every reason why
6 not. I mean, I thought the point of doing it in an individual
7 capacity was to spare the potential juror the embarrassment of
8 discussing intimate matters in front of people.

9 THE COURT: Well, it's also to spare the other jurors
10 being tainted by hearing the questions and answers of the

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11 others.

12 MS. WHITE: That's my understanding as to --

13 THE COURT: But it's open to the public otherwise.

14 MS. MARKS: Okay.

15 (Off the record.)

16 THE COURT: If the two others that are supposed to be
17 here don't show up, I propose we proceed without them because
18 we can always pick them up this afternoon in the second batch.

19 MS. WHITE: That's fine, Your Honor.

20 THE COURT: What if they don't show up, do you want to
21 go ahead without them?

22 MR. KAROWSKY: Your Honor, that would be -- I'm just
23 speaking out of turn. That would be fine, but I think I'd
24 also like to come up with a timing. I guess, you know,
25 there's probably 15, 20 minutes per person it seems to me.

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1 THE COURT: Why don't we start and see how it goes,
2 and then if it looks like the Court needs to set some limits,
3 I can do that. But I'd like to start by just letting you go
4 through it and see how long it takes.

5 MR. KAROWSKY: That's perfect. Thank you.

6 THE COURT: All right. Let's bring them all in
7 then, those that are here.

8 THE CLERK: Okay. There's one more parking his car on
9 his way up.

10 THE COURT: Okay. We'll wait for the one parking his
11 car.

12 (Off the record.)

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13 THE COURT: Ms. Endrizzi, I'm going to have you or Ms.
14 White read the list of witnesses then. All right?
15 MS. WHITE: That's fine, Your Honor.
16 MS. ENDRIZZI: Thank you, Your Honor.
17 THE COURT: And I'm going to ask the defense if they
18 have any other witnesses that they'd like to identify.
19 MS. ENDRIZZI: And both the conference rooms are open
20 and empty except for magazines.
21 MR. KAROWSKY: Your Honor, does the government have a
22 spare copy of the witness list?
23 MS. WHITE: Regrettably I do not.
24 MR. KAROWSKY: Okay. That's fine. I'll just listen.
25 THE COURT: While we're waiting, you might let them

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1 look at it.
2 MS. WHITE: Sure.
3 (Off the record.)
4 MR. KAROWSKY: Your Honor?
5 THE COURT: Yes.
6 MR. KAROWSKY: As I'm sitting here, is it possible to
7 put the jurors, the one juror that we're talking to in the
8 elevated row as opposed to the lower rows?
9 THE COURT: Yeah, where would be better? Which seat
10 would be the best?
11 MR. KAROWSKY: Just somewhere in the center.
12 And I guess the other question is procedurally is the
13 questioning by counsel going to be from the podium?
14 MS. WHITE: Excuse me. I'm sorry?

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15 THE COURT: He wants to know whether the questioning
16 from counsel would be by the podium. I think so.
17 And you can have them sit in whichever seat is easiest
18 to see. Which seat do you like?
19 MR. KAROWSKY: Probably the center of the back row
20 would be fine with me, Your Honor.
21 THE COURT: All right. We'll just tell them to sit
22 somewhere in the middle of the back row and see which seat
23 they end up in.
24 (The following proceedings were had in the
25 presence of the prospective jurors:)

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1 THE COURT: The case has already been called, and this
2 is the case of United States versus Michael LaBrecque,
3 Juliette LaBrecque and Allen Harrod. The jurors are back.
4 Thank you very much for returning, Ladies and Gentlemen.
5 We have your questionnaires which you completed the
6 last time you were here, so I am not going to have to ask you
7 as many questions as I ordinarily would. I'm going to have
8 you identify yourselves again, I'm going to remind you who the
9 parties are and just have a few general questions for you when
10 we begin.
11 After we finish that phase, I'm going to excuse all of
12 you except one, and we are going to question each of you
13 individually. I'm going to ask some questions, the lawyers
14 are going to ask some questions, and then after we're through
15 questioning you individually we're going to have you go back
16 to a room, and we are going to discuss whether to leave you in

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17 until the next phase of the trial. Now, that doesn't mean
18 that you'll necessarily be on the jury if you're left in. But
19 if you're not left in and you're excused, then your services
20 for this case will no longer be necessary.

21 While I'm questioning you individually, I'm going to
22 have some of you remain in the jury room just outside this
23 courtroom, and I'm going to have some of you leave for the
24 morning and come back this afternoon. That is the procedure
25 that we're going to follow.

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1 I need to know who all of you are to start with so --
2 do you have the microphone there?

3 THE CLERK: Yes, Your Honor.

4 THE COURT: As the microphone is handed to you, just
5 tell us who you are, and then I want to ask you just a couple
6 of general questions.

7 THE CLERK: I'm going to put a fresh battery just in
8 case.

9 THE COURT: All right.

10 Yes, Mr. -- are you Mr. Bubak?

11 PROSPECTIVE JUROR BUBAK: Bubak.

12 THE COURT: Bubak. All right. Keith Vincent Bubak.

13 PROSPECTIVE JUROR BUBAK: Yes, sir.

14 THE COURT: Thank you. Would you pass the microphone.

15 PROSPECTIVE JUROR HUDSON: William Hudson.

16 THE COURT: Mr. Hudson.

17 PROSPECTIVE JUROR SHERWOOD: William Sherwood.

18 THE COURT: Mr. Sherwood.

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19 PROSPECTIVE JUROR GREEN: John-Charles Green.
20 THE COURT: Mr. Green.
21 PROSPECTIVE JUROR CADDEL: Rosemarie Caddel.
22 THE COURT: All right. Thank you.
23 PROSPECTIVE JUROR NAVA: Constantino Nava.
24 THE COURT: Thank you.
25 PROSPECTIVE JUROR CANO: Juanita Cano.

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1 THE COURT: Thank you.
2 PROSPECTIVE JUROR EBERT: Karen Ebert.
3 THE COURT: Thank you.
4 PROSPECTIVE JUROR GENTILI: Robert Gentili.
5 THE COURT: Thank you.
6 PROSPECTIVE JUROR PARRY: Chris Parry.
7 THE COURT: Mr. Parry. Thank you. Would you pass the
8 microphone up to the front. Oh, that would be nice.
9 PROSPECTIVE JUROR COWELL: I'm Jack Cowell.
10 THE COURT: Mr. Cowell.
11 PROSPECTIVE JUROR RESHKE: Victoria Reshke.
12 THE COURT: Ms. Reshke.
13 PROSPECTIVE JUROR TOCH: Aaron Toch.
14 THE COURT: Thank you.
15 PROSPECTIVE JUROR SADLER: Catherine Sadler.
16 THE COURT: Thank you.
17 PROSPECTIVE JUROR SIEMSEN: Ronald Siemsen.
18 THE COURT: Thank you.
19 PROSPECTIVE JUROR CUSHMAN: Stacy Cushman.
20 THE COURT: Thank you.

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21 PROSPECTIVE JUROR MASTY: Jan Masty.
22 THE COURT: Ms. Masty. Thank you.
23 PROSPECTIVE JUROR WELLS: Carrie Wells.
24 THE COURT: And Ms. Wells.
25 PROSPECTIVE JUROR KONVALIN: And William Konvalin.

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1 THE COURT: Mr. Konvalin.
2 Okay. So we should have one empty seat alongside of
3 you. One of the people that showed up last time is not back
4 for reasons that we need not discuss.
5 There was one question that we were unable to have you
6 answer because somebody neglected to put the list of witnesses
7 with the questionnaire that you answered. So one of the
8 questions asked you if you knew any of the witnesses, and of
9 course you weren't able to answer that question without
10 knowing who they were. I'm going to have the United States
11 attorney read the list of witnesses that the government
12 intends to call, and then after she's finished I'm going to
13 ask you if any of you know or think you might know any of
14 those people.
15 Ms. White.
16 MS. WHITE: Thank you, Your Honor. Good morning.
17 The government intends to call among the following
18 witnesses: Robert Challoner; James Harris, seated right here;
19 Samantha Dussell; Jennifer Johnson; Robert Thompson; John
20 Harrod; Joshua Harrod; Abigail Harrod; Teresa LaBrecque;
21 Sarah LaBrecque; Keliha LaBrecque; Maria Ornelas; Richard
22 Zomper; Irene Hunt; Barbara Williams; Art Dorl; MaryAnelle

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23 Hammer; and Samuel LaBrecque.

24 THE COURT: Do any of you know or think you might know
25 any of the persons whose names have just been read to you? If

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1 you think you might know them, raise your hand and we can ask
2 you some follow-up questions to determine if you really do
3 know them.

4 Mr. Green, do you think you might know any of these
5 people?

6 PROSPECTIVE JUROR GREEN: Yes.

7 THE COURT: Who do you think you might know?

8 PROSPECTIVE JUROR GREEN: I work for a bank, and one
9 of my customers' name is Jennifer Danley Johnson. I don't
10 know if that's the same --

11 THE COURT: Jennifer Danley Johnson. Would that be
12 the witness, Ms. White?

13 MS. WHITE: I don't know, Your Honor, because I don't
14 know Ms. Johnson's last name. I do -- I can tell him that
15 Jennifer Johnson is an evidence tech with the Folsom Police
16 Department if that rings any bells.

17 PROSPECTIVE JUROR GREEN: It doesn't. It sounds
18 unlikely that she would be the customer that I've helped.

19 THE COURT: Where is your bank?

20 PROSPECTIVE JUROR GREEN: Off of Watt Avenue and 50,
21 Highway 50.

22 THE COURT: All right. That's not too far from
23 Folsom, so it's possible.

24 PROSPECTIVE JUROR GREEN: Right.

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25 THE COURT: Let me ask you this, then, Mr. Green: If

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1 it should turn out that this customer is a witness in the case
2 and the nature of her testimony is that she will identify some
3 evidence -- is she an expert witness as well?

4 MS. WHITE: No, Your Honor. All she was was the
5 evidence tech who handed evidence from their evidence locker
6 to an FBI agent.

7 THE COURT: If it should turn out that this is one of
8 your customers, would the fact that she's your customer at all
9 affect your ability to listen to the evidence objectively and
10 reach a verdict based on the evidence in the case?

11 PROSPECTIVE JUROR GREEN: No, Your Honor.

12 THE COURT: All right. Anybody else think you might
13 know any of the persons whose names were read?

14 All right. Do any of the defense attorneys have any
15 prospective witnesses whose names should be read to the jury
16 at this time in addition to those that the government has
17 read?

18 MR. KAROWSKY: No, we don't at this time, Your Honor.
19 Thank you.

20 MR. LOCKE: No, Your Honor.

21 THE COURT: All right. Have any of you ever studied
22 law or criminal justice?

23 Mr. Nava.

24 PROSPECTIVE JUROR NAVA: Uh-huh.

25 THE COURT: Tell us about that.

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1 PROSPECTIVE JUROR NAVA: Well, I went through the law
2 program at Butte College for two years and then I went to the
3 police academy.

4 THE COURT: You went to the police academy. As you
5 know from the questionnaire that you've already answered, if
6 you're selected as a juror in the case, it will be your
7 responsibility to follow the law as I give it to you whether
8 you agree with it or not, whether you think it's good law or
9 bad law. If the instructions that I give you on the
10 applicable law should differ from the law as you understand it
11 or remember it from the courses that you have taken, would you
12 be able to follow the law as I give it to you rather than as
13 you remember it from the courses that you took?

14 PROSPECTIVE JUROR NAVA: Yes, sir.

15 THE COURT: All right. Is there any one of the -- are
16 any other jurors unable to follow the law as I give it to you
17 without regard to whether you agree with it or not or whether
18 you think it's good law or bad law? Is there any one of you
19 who could not follow the law as I instruct you for any reason?

20 All right. I want to just, before you leave and we
21 bring you back here, remind you who the parties are. They
22 were all introduced to you earlier, and you may have forgotten
23 their names, but we're going to be calling on them and you
24 should know who the lawyers are at least.

25 The United States government is represented by

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1 Assistant United States attorneys Laurel White on the left and
2 Ellen Endrizzi immediately to her left on your right.

3 The defense attorneys are Jan Karowsky, who is on the
4 far left here, representing Juliette LaBrecque; and Caro Marks
5 from the Federal Defender's office who is representing Michael
6 LaBrecque; and Bruce Locke, who is representing Allen Harrod,
7 he's on the far right.

8 All right. So I'm going to excuse all of you except
9 Juror No. 1, Mr. Bubak, right now. What I'm going to have you
10 do, the Clerk will take -- I'm going to make this a little
11 more complicated because I've got a jury room there that only
12 seats 12 people, and I don't want 20 of you jammed into that
13 little room. And I'm sure that we're not going to be able to
14 get to some of you until this afternoon, but I do hope that
15 we'll be able to get to all of you today.

16 So I'm going to take the first twelve, which would be
17 through Ms. Reshke, the first twelve of you, and I'm going to
18 have you go and sit in the jury deliberation room that we have
19 off to the side. It's the room where the jury meets to
20 deliberate at the end of the trial. It's also the room that
21 they meet before they come into court every day. So if you're
22 selected as a juror, you're going to become familiar with that
23 room, and it will comfortably seat twelve of you.

24 The rest of you beginning with Mr. Toch and to the end
25 of the front row, you can leave for this morning and come back

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1 at 1:30 this afternoon. Hopefully we'll be able to get to you

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2 right at that time. All right.

3 So, counsel, is there anything else that I need to
4 address before we divide the jurors up?

5 MS. WHITE: Not from the government, Your Honor, no.

6 MR. LOCKE: No, Your Honor.

7 THE COURT: All right. So those of you that I told
8 could go, come back at 1:30 and meet outside the courtroom,
9 and the Courtroom Deputy will bring you back in. The rest of
10 the twelve of you except Mr. Bubak, somebody will take you to
11 the juror deliberation room where you can wait until we get to
12 you later this morning. All right.

13 (Off the record.)

14 (Prospective Juror Bubak present.)

15 THE COURT: Mr. Bubak, why don't you sit more in the
16 middle of the back row there, and that will be the best place
17 for all of the lawyers to see you. And we're going to give
18 you a little handheld microphone, and you'll be on.

19 Do you have the handheld mike?

20 All right. Mr. Locke, are you going to begin?

21 MR. LOCKE: I'm going to begin, Your Honor.

22 THE COURT: All right. The lawyers will begin to ask
23 you some questions, and you're still under oath so you may
24 answer their questions.

25 MR. LOCKE: Thank you, Mr. Bubak. My name is Bruce

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1 Locke, and I'm one of the defense attorneys, and I just have a
2 few questions for you.

3 And I want to let you know that in asking these

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4 questions, I'm as uncomfortable as I expect you will be
5 talking about some of these things. And I guarantee if we met
6 outside this courtroom, we wouldn't ever have a discussion
7 about the matters we're going to talk about, but they're the
8 matters that are relevant to this case, and they're very
9 important to this case, and I need you to be sure to tell me
10 exactly what you feel and what you think in response to my
11 questions.

12 Is that all right with you?

13 PROSPECTIVE JUROR BUBAK: Sounds good.

14 MR. LOCKE: The Court Reporter has to take down every
15 word, and so we need to be careful that you actually respond.

16 THE COURT: And if you'll back up just a step there,
17 Mr. Locke, I think the microphone might pick you up better.

18 MR. LOCKE: In that regard, Your Honor, would it be
19 better for him to be on the witness stand or -- well --

20 THE COURT: That might not be a bad idea.

21 MR. LOCKE: It --

22 THE COURT: There's a microphone there.

23 MR. LOCKE: That way the microphone would be pointed
24 at him.

25 THE COURT: Let's do that. Mr. Bubak, there's a

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1 microphone over here on the witness stand. The next time
2 somebody asks you if you've ever been a witness, you still
3 can't say yes. Now you use the microphone there, Mr. Locke.

4 MR. LOCKE: Right. I was going to get the other one.
5 I don't know whether having two mikes there will cause a

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6 problem, that's all.

7 This case is going to be a difficult case to try and a
8 difficult case to -- for a person to hear. It's going to be
9 uncomfortable, you understand that?

10 PROSPECTIVE JUROR BUBAK: Yes.

11 MR. LOCKE: Just from the nature of the case that you
12 know right now.

13 You're not married and you don't have any children; is
14 that right?

15 PROSPECTIVE JUROR BUBAK: No, sir.

16 MR. LOCKE: Okay. Do you have any nieces or nephews?

17 PROSPECTIVE JUROR BUBAK: Yes, I do.

18 MR. LOCKE: Okay. How many?

19 PROSPECTIVE JUROR BUBAK: Three nephews and two
20 nieces.

21 MR. LOCKE: Okay. What are their ages?

22 PROSPECTIVE JUROR BUBAK: Thirteen, eleven, three,
23 two, and like two months.

24 MR. LOCKE: Okay. And you have a good relationship
25 with your nieces and nephews?

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1 PROSPECTIVE JUROR BUBAK: Yes.

2 MR. LOCKE: You love them?

3 PROSPECTIVE JUROR BUBAK: Yes.

4 MR. LOCKE: And you have a natural feeling of wanting
5 to protect those children?

6 PROSPECTIVE JUROR BUBAK: Yes.

7 MR. LOCKE: And you wouldn't want to see anything bad

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8 happen to them?

9 PROSPECTIVE JUROR BUBAK: No.

10 MR. LOCKE: Okay. On a scale of one to ten, with one
11 being the least deserving of punishment and ten being the most
12 deserving of punishment, how would you rate having sex with
13 children under the age of eleven?

14 PROSPECTIVE JUROR BUBAK: Nine.

15 MR. LOCKE: All right. What if the person having sex
16 with that child was the child's parent?

17 PROSPECTIVE JUROR BUBAK: Nine.

18 MR. LOCKE: Okay. What do you think is a worse crime
19 than what I just described to you?

20 PROSPECTIVE JUROR BUBAK: Murder.

21 MR. LOCKE: Okay. What's the first word that comes to
22 your mind when I say that a parent was having sex with a
23 7-year-old daughter?

24 PROSPECTIVE JUROR BUBAK: Disgusting.

25 MR. LOCKE: You have a -- a mental reaction to that.

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1 Do you also -- do you also have a physical reaction like a
2 feeling of revulsion or nausea about thinking about that?

3 PROSPECTIVE JUROR BUBAK: No.

4 MR. LOCKE: Okay. Just a mental reaction of that's
5 disgusting?

6 PROSPECTIVE JUROR BUBAK: Yeah.

7 MR. LOCKE: Okay. How would you feel or what would
8 your first reaction be to learning that a father who was
9 having sex with a 7-year-old daughter was justifying it based

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10 upon religion, that it was part of his religion that he do
11 that?

12 PROSPECTIVE JUROR BUBAK: I'd see it as a -- as an
13 excuse.

14 MR. LOCKE: Okay. Do you -- you understand that this
15 case is going to have some publicity involved with it and it's
16 going to be in the newspapers?

17 PROSPECTIVE JUROR BUBAK: Yes.

18 MR. LOCKE: All right. You have friends, right?

19 PROSPECTIVE JUROR BUBAK: Yes.

20 MR. LOCKE: And co-workers?

21 PROSPECTIVE JUROR BUBAK: Yes.

22 MR. LOCKE: And family members?

23 PROSPECTIVE JUROR BUBAK: Yep.

24 MR. LOCKE: Okay. And all of those people are going
25 to know in some way or another that you're on a jury if you're

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1 selected on this case.

2 PROSPECTIVE JUROR BUBAK: Yes.

3 MR. LOCKE: And they're going to learn from the
4 publicity, they may learn exactly what kind of case this is.
5 You understand that?

6 PROSPECTIVE JUROR BUBAK: Yes.

7 MR. LOCKE: In fact, have you told any of your friends
8 and co-workers or your family what the nature of this case is?

9 PROSPECTIVE JUROR BUBAK: No, just told them that I
10 was on jury selection.

11 MR. LOCKE: Knowing what the nature of the case is and

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12 knowing about the publicity and that people will know that
13 you -- may know that you were on this jury, do you think that
14 you could acquit any of these people if the government didn't
15 prove its case beyond a reasonable doubt?

16 PROSPECTIVE JUROR BUBAK: Yes.

17 MR. LOCKE: Okay. Now, in this case, one of the
18 elements that the government has to prove is that the
19 defendant transported or aided in the transportation of a
20 child, a minor, across state lines for the purpose, with the
21 intent that the child engage in illegal sexual activity.
22 Okay?

23 Now, if in this case you were convinced that the
24 sexual activity actually took place, that the defendant had
25 oral, anal, and vaginal sex with the minor, but if the

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1 government offered no evidence to show that the defendant
2 intended that at the time that the child was transported
3 across state lines, would you be able to vote to acquit the
4 defendants in that case?

5 PROSPECTIVE JUROR BUBAK: Yes.

6 MR. LOCKE: Okay. You hesitated when you answered
7 that. Why did you hesitate?

8 PROSPECTIVE JUROR BUBAK: It's kind of a tough --
9 tough question to answer. But the law is the law, so you
10 gotta follow the laws.

11 MR. LOCKE: Okay. Would you think that you would be
12 able to explain to the satisfaction of your friends and your
13 family and your co-workers that you voted to acquit somebody

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14 in a case like that?

15 PROSPECTIVE JUROR BUBAK: The honest truth, I don't
16 have to explain myself to anybody.

17 MR. LOCKE: Okay. You don't think that you would feel
18 compelled to explain to your family how you came to that
19 decision?

20 PROSPECTIVE JUROR BUBAK: Either way my family is
21 still going to love me, so it doesn't matter.

22 MR. LOCKE: Okay. Okay. Is there any question that
23 you think I should ask you about this case or about your being
24 on this case that I haven't asked you?

25 PROSPECTIVE JUROR BUBAK: Not that I can think of.

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1 MR. LOCKE: Okay.

2 THE COURT: Ms. Marks, do you have any questions?

3 MS. MARKS: No thank you.

4 THE COURT: Mr. Karowsky?

5 MR. KAROWSKY: No thank you, Your Honor.

6 THE COURT: Ms. Endrizzi or Ms. White?

7 MS. WHITE: No, Your Honor, the government has no
8 questions for this prospective juror.

9 THE COURT: All right. Mr. Bubak, if you'll step back
10 to the back of the courtroom now, the court security officer
11 will show you the room that we want you to wait in just
12 briefly until we tell you whether to come back later or not.

13 PROSPECTIVE JUROR BUBAK: Okay.

14 THE COURT: All right. Thank you.

15 (Prospective Juror Bubak departed courtroom.)

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16 THE COURT: All right. Mr. Bubak is outside the
17 courtroom.

18 I don't know what you're going to say, but I hope
19 they're all like him.

20 MR. KAROWSKY: May we have just a moment, Your Honor?

21 THE COURT: Yes.

22 (Defense counsel conferring.)

23 MR. LOCKE: We're not going to raise a challenge, Your
24 Honor.

25 MS. WHITE: None from the government, Your Honor.

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1 THE COURT: All right. Then when do you want me to
2 tell Mr. Bubak to come back?

3 MR. LOCKE: I would guess, Your Honor, that on the
4 morning of the 15th. That's when we're going to do the
5 peremptory challenges and then go into opening statements I
6 guess, right? Is it the 15th?

7 THE COURT: Yes. I'm just wondering whether -- what
8 you want to do if we finish earlier with this process, still
9 come back the 15th?

10 MR. LOCKE: I think that's the one thing we can be
11 sure of.

12 THE COURT: All right.

13 MR. LOCKE: And it won't take much time to do the
14 peremptories --

15 THE COURT: All right. And if we run out of time or
16 if we have extra time this week, we just won't worry about it.

17 MS. WHITE: I concur, Your Honor.

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18 THE COURT: All right. We're not going to meet Friday
19 of -- Friday the 18th we're not going to meet, I have another
20 matter that I have to take care of. And then January the 21st
21 is a holiday, so we're only going to have a three-day week the
22 following week. So there's two three-day weeks in a row, but
23 that shouldn't be a problem because, after that, we should be
24 okay until we get to the next holiday.

25 MS. MARKS: Excuse me, Judge Shubb. I've already --

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1 I've already notified the government and my co-counsel that my
2 daughter has a cardiologist appointment on Friday the 25th in
3 the afternoon, it's been set for a year, and I need to not be
4 here on that day.

5 THE COURT: Okay. Friday the 25th?

6 MS. MARKS: Yes, please. I can come here all morning.
7 I just have to --

8 THE COURT: All right. So that will only be a two-day
9 week.

10 MS. MARKS: Thank you, Your Honor.

11 MR. KAROWSKY: Your Honor, while we're talking about
12 scheduling, maybe the Court could give me an assist. I have
13 an appearance in front of Judge Jensen --

14 THE COURT: Here?

15 MR. KAROWSKY: Yes. And I'll give the Court the date,
16 it's a morning appearance, I just can't find it right now off
17 the top of my head. But --

18 THE COURT: It's on a Tuesday morning, that's when his
19 calendar is.

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20 MR. KAROWSKY: Right.

21 THE COURT: We'll work that out.

22 MR. KAROWSKY: I just want to let the Court know

23 since --

24 THE COURT: Judge Jensen is very accommodating. See

25 if you can work it out with him, and if you can't work it out

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1 with him, I'll talk to him.

2 MR. KAROWSKY: Great. Thank you.

3 THE COURT: All right. So we'll tell Mr. Bubak to

4 come back on the January the 15th at 9:00.

5 MS. WHITE: Correct.

6 THE COURT: All right. Could you have him just come

7 back into the courtroom, please.

8 (Prospective Juror Bubak entered courtroom.)

9 THE COURT: Mr. Bubak, you can stay back there. I'm

10 ordering you to return to this court at 9:00 a.m. on January

11 the 15th. The Clerk is going to get a telephone number from

12 you now so that we can be in touch with you in case there is

13 any change of plans, and you have a number I think that you

14 can call if you have any problems.

15 Before you leave, I'm also admonishing you not to

16 discuss this case with anyone and not to seek or receive any

17 information about the case or any issue that you think might

18 be involved in the case. All right?

19 PROSPECTIVE JUROR BUBAK: Okay.

20 THE COURT: So the Clerk is going to give you her card

21 now. Thank you for coming today, and we will see you at 9:00

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22 a. m. on January the 15th, which is a Tuesday morning.
23 All right. Would you bring in Mr. Hudson, please.
24 THE CLERK: Yes.
25 (Prospective Juror Bubak departed courtroom.)

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1 (Prospective Juror Hudson entered courtroom.)
2 THE COURT: All right. Mr. Hudson, I'm going to let
3 the attorneys do the examination now, and I think we'll begin
4 with the government lawyer.
5 MS. WHITE: Correct.
6 THE COURT: Ms. White will ask you some questions, and
7 then if the defense attorneys have any questions they'll ask
8 you. It looks like it's Ms. Endrizzi that's going to ask the
9 questions.
10 MS. ENDRIZZI: Good morning, Mr. Hudson.
11 PROSPECTIVE JUROR HUDSON: Good morning.
12 MS. ENDRIZZI: Question, when was your car broken
13 into, what year; do you remember?
14 PROSPECTIVE JUROR HUDSON: Oh --
15 MS. ENDRIZZI: Ballpark, five years, ten years ago?
16 PROSPECTIVE JUROR HUDSON: It was probably fifteen, 10
17 or 15 years ago.
18 MS. ENDRIZZI: Okay. And would that experience keep
19 you from being a fair and impartial juror in this case?
20 PROSPECTIVE JUROR HUDSON: No.
21 MS. ENDRIZZI: Okay. Now your sister-in-law and her
22 husband worked for Berkeley Police Department?
23 PROSPECTIVE JUROR HUDSON: Yes, that's correct.

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24 MS. ENDRIZZI: And would their experiences as police
25 officers affect your evaluation of the facts in this case?

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1 PROSPECTIVE JUROR HUDSON: No, it would not.

2 MS. ENDRIZZI: Okay. And two of the defendants in
3 this case were involved -- were enlisted in the United States
4 Air Force. Would your military experience color or bias your
5 evaluation of the facts here in this case?

6 PROSPECTIVE JUROR HUDSON: No, it would not.

7 MS. ENDRIZZI: What does a material engineer do? Just
8 had to ask you.

9 PROSPECTIVE JUROR HUDSON: Primary responsibilities
10 are to work with suppliers and evaluating quality problems and
11 also making recommendations to design engineers about which
12 parts or which suppliers to use.

13 MS. ENDRIZZI: Okay. Do you remember what the charges
14 were in each of the two criminal trials where you were a
15 juror?

16 PROSPECTIVE JUROR HUDSON: In the first trial, the one
17 in Santa Clara County, which was long time ago, almost 30
18 years ago I think, the main charge was attempted murder, and
19 there were also some lesser charges, one of which I remember
20 was dealing with embezzlement or some amount of funds.

21 And then on the more recent trial, I think it was a
22 misdemeanor, attacking a police officer --

23 MS. ENDRIZZI: Okay.

24 PROSPECTIVE JUROR HUDSON: -- was the charge.

25 MS. ENDRIZZI: And do you remember about when that

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1 was?

2 PROSPECTIVE JUROR HUDSON: I think it was about three
3 years ago approximately.

4 MS. ENDRIZZI: And would your experiences as a juror
5 color your ability to evaluate the facts here in this case?

6 PROSPECTIVE JUROR HUDSON: No.

7 MS. ENDRIZZI: Okay. And then -- Mr. Hudson was
8 actually one of the jurors who requested to be excused briefly
9 for travel, and I think the jury consultant let you know that
10 you could travel; is that correct?

11 PROSPECTIVE JUROR HUDSON: Right.

12 MS. ENDRIZZI: Okay.

13 PROSPECTIVE JUROR HUDSON: I think when -- well, it's
14 on the 10th and 11th, which I think you may be interviewing
15 other jurors --

16 MS. ENDRIZZI: Right.

17 PROSPECTIVE JUROR HUDSON: -- potential jurors.

18 MS. ENDRIZZI: Quick question, do you know what
19 division your sister-in-law and brother were in in the police
20 department, homicide or vice or --

21 PROSPECTIVE JUROR HUDSON: Not per se. I know that
22 there were times they were on the streets, but I don't know
23 which --

24 MS. ENDRIZZI: Okay.

25 PROSPECTIVE JUROR HUDSON: -- division, though.

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1 MS. ENDRIZZI: All right. Very good. Thank you, Mr.

2 Hudson.

3 THE COURT: Mr. Locke.

4 MR. LOCKE: Thank you, Your Honor.

5 Good morning, Mr. Hudson.

6 PROSPECTIVE JUROR HUDSON: Good morning.

7 MR. LOCKE: My name is Bruce Locke, and I'm one of the
8 defense attorneys in this case. And I want to thank you for
9 being here.

10 And I want you to know that these questions that I'm
11 going to ask you, some of them make me uncomfortable and I'm
12 sure they'll make you uncomfortable, and I guarantee you that
13 we wouldn't be having this kind of a discussion if we met
14 outside this courtroom. But right now you're one of the most
15 important people in the courtroom because you may be called
16 upon to decide this case.

17 Do you understand that?

18 PROSPECTIVE JUROR HUDSON: Yes.

19 MR. LOCKE: And as someone who may be deciding the
20 facts of this case, I need to know exactly how you would feel
21 about some of the things that are going to come up in this
22 case. You understand?

23 PROSPECTIVE JUROR HUDSON: Yes, I do.

24 MR. LOCKE: Okay. And you understand from the nature
25 of what's been told to you so far about the charges in this

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1 case, that it involves allegations of adults having sex with
2 children. Do you understand that?

3 PROSPECTIVE JUROR HUDSON: Yes.

4 MR. LOCKE: And it involves parents, allegations of
5 parents having sex with their own children. Do you understand
6 that?

7 PROSPECTIVE JUROR HUDSON: Yes, I do.

8 MR. LOCKE: Okay. And I noted that you have three
9 children; is that right?

10 PROSPECTIVE JUROR HUDSON: That's correct, yes.

11 MR. LOCKE: I mean, they're boys and they're
12 considerably -- they're in their twenties and thirties now.
13 But when you were raising them, obviously you had -- you loved
14 your children, you love your children.

15 PROSPECTIVE JUROR HUDSON: Right.

16 MR. LOCKE: Right?

17 And how do you feel about a parent's duty to protect
18 their children from harm?

19 PROSPECTIVE JUROR HUDSON: Well, I certainly feel a
20 parent should do that, should --

21 MR. LOCKE: Okay.

22 PROSPECTIVE JUROR HUDSON: -- do all that he or she
23 can do.

24 MR. LOCKE: Do all that he or she can do to protect
25 the child?

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1 PROSPECTIVE JUROR HUDSON: Right.

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2 And I mean, at the same time, you have to sometimes be
3 tough in one's discipline of your child. I mean, parenting is
4 a big job.

5 MR. LOCKE: Okay. On a scale of one to ten, ten being
6 the least serious crime and ten being the most serious crime,
7 where would you place --

8 THE COURT: You had ten being the most and the least.

9 MR. LOCKE: Did I?

10 Ten being -- one being the least and ten being the
11 most serious, where would you place having sex with a minor?

12 PROSPECTIVE JUROR HUDSON: Probably around eight or
13 nine.

14 MR. LOCKE: Okay. And what about if I added the fact
15 of having sex with a minor who is your own child?

16 PROSPECTIVE JUROR HUDSON: Same.

17 MR. LOCKE: Same?

18 PROSPECTIVE JUROR HUDSON: Probably nine.

19 MR. LOCKE: Is it the same or is it worse?

20 PROSPECTIVE JUROR HUDSON: It would be slightly worse.
21 It would be worse.

22 MR. LOCKE: Okay. What's the first word that comes to
23 your mind if I tell you that there's a parent who is having
24 sex, oral sex with a 7-year-old daughter? What's the first
25 word that comes to your mind?

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1 PROSPECTIVE JUROR HUDSON: Disgusting.

2 MR. LOCKE: All right. You would feel very strongly
3 then that someone who was guilty of doing that should be

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4 puni shed?

5 PROSPECTIVE JUROR HUDSON: Yes.

6 MR. LOCKE: You know that this case is going to
7 have -- do you -- well, let me suggest to you that this case
8 is going to involve some publicity. There's going to be
9 articles about it in the newspaper.

10 And your friends and family are going to know that
11 you're on a jury, right?

12 PROSPECTIVE JUROR HUDSON: Well, they're going to know
13 that I'm on a jury, yes.

14 MR. LOCKE: Right. And eventually they would learn
15 that you were on this particular jury after -- certainly by
16 the time the case was over.

17 Given how you feel about the nature of the charges
18 here, that they're disgusting and how you feel about the
19 people who committed those kind of acts should certainly be
20 punished, do you think that you would be able to explain to
21 your family and your friends if you voted to acquit any of
22 these defendants in this case?

23 PROSPECTIVE JUROR HUDSON: Yes. If -- if the facts of
24 the case were not proven, I could do that.

25 MR. LOCKE: Okay. In this case, the government is

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1 required to prove that -- that the defendant or defendants
2 transported or aided in the transportation of a person under
3 the age of eighteen across state lines with the intent that
4 that person engage in criminal sexual activity.

5 You understand that?

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6 PROSPECTIVE JUROR HUDSON: Yes.

7 MR. LOCKE: Okay. And the criminal sexual activity in
8 this case would be having sex with a minor.

9 Okay. Now, if the facts in this case were that a
10 child, age fourteen, was transported from Texas to California,
11 and after the child arrived in California a defendant had oral
12 sex with the child, anal sex with the child, and vaginal sex
13 with the child, but if the government offered no evidence that
14 the defendant intended that to happen at the time that the
15 child crossed state lines, would you be able to vote to acquit
16 that person in that kind of a case?

17 PROSPECTIVE JUROR HUDSON: If everything you say is
18 true, if the intent was not proven and that's part of the law
19 that the judge would give, then -- then I would give a -- that
20 verdict of being it wasn't proved, it was not guilty.

21 MR. LOCKE: Okay. And you'd be able -- you feel that
22 you would be strong enough to be able to explain that to your
23 family and your friends?

24 PROSPECTIVE JUROR HUDSON: Yes.

25 MR. LOCKE: Okay. Is there any reason that you know

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1 of why you shouldn't be a juror on this case, anything that I
2 haven't asked you that would cause you concern if you were a
3 defendant and -- and you were going to be on the jury?

4 PROSPECTIVE JUROR HUDSON: No, I don't think so.

5 THE COURT: All right. Any more questions, Mr. Locke?

6 MR. LOCKE: I don't have any questions. I'm sorry,
7 Your Honor. I think Mr. --

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8 THE COURT: Before we get to Mr. Karowsky, Ms. Marks,
9 do you have any questions?
10 MS. MARKS: No.
11 THE COURT: Mr. Karowsky.
12 MR. KAROWSKY: Thank you, Your Honor.
13 Good morning, sir. I'll be brief.
14 I notice that you are religious yourself, correct?
15 PROSPECTIVE JUROR HUDSON: Yes, I'm a Christian.
16 MR. KAROWSKY: Okay. Do you understand that there are
17 going to be allegations in this case, in fact there's going to
18 be proof probably that at least the two male defendants took
19 Bible -- the Bible, crafted stories from the Mormon belief and
20 theology and Judaism and basically perverted those stories to
21 justify the molestation, the anal, the oral, the sex with
22 their children.
23 Do you understand that?
24 PROSPECTIVE JUROR HUDSON: Well, I'll --
25 MR. KAROWSKY: Do you understand that?

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1 PROSPECTIVE JUROR HUDSON: -- take your word for what
2 you say.
3 MR. KAROWSKY: Okay. Fine. Do you find that equally
4 as disgusting as the sex with the kids?
5 PROSPECTIVE JUROR HUDSON: It -- it is certainly --
6 taking the Bible and twisting it is not -- I don't know -- you
7 said as disgusting. I don't know if I would put it on the
8 same par, but I certainly understand that sometimes people use
9 the scriptures erroneously.

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10 MR. LOCKE: Right, that's well put. I mean, I agree
11 it's more disgusting to be harming a child than it is to be
12 perverting theology potentially. But doesn't that upset you,
13 doesn't that get you upset that the -- the Lord's word is
14 being used as a basis for these disgusting, repulsive,
15 revolting, obnoxious acts?

16 PROSPECTIVE JUROR HUDSON: It is -- it does upset me,
17 yes.

18 MR. KAROWSKY: All right. It does. It's upsetting to
19 all of us. I'm not suggesting it's not upsetting to me. I
20 have a constitutional duty to represent my client --

21 THE COURT: Don't get into your own views.

22 MR. KAROWSKY: Thank you, Your Honor.

23 Are you going to be able to sit -- I mean, can you sit
24 there right now and have the image of one of these males
25 putting their penis in the anus of a 7-year-old? Is that --

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1 is that an image you're willing to endure for this trial and
2 forever?

3 PROSPECTIVE JUROR HUDSON: It -- it is not something
4 that I would choose to do. However, I've been called to be
5 potentially a juror, and I think I could serve in a fair
6 way --

7 MR. KAROWSKY: Okay.

8 PROSPECTIVE JUROR HUDSON: -- even though there are
9 things that I'm sure are going to come up that I would prefer
10 not to see or hear.

11 MR. KAROWSKY: All right. Well, can you turn the

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12 other cheek?

13 PROSPECTIVE JUROR HUDSON: I can give a fair,
14 unbiased -- or applying the law according to the facts.
15 Throughout my time as being a materials engineer, I had to
16 separate certain facts from others and come up with an
17 appropriate judgment, and I think I can do that well as a
18 juror.

19 MR. KAROWSKY: Can you be true to your own faith and
20 not choose to follow your human emotions in seeking punishment
21 for repugnant acts even if the law tells you -- that is the
22 law the Court will tell you, the judge, that you're otherwise
23 obligated to vote for not guilty?

24 In other words, if the facts aren't there but you're
25 satisfied that all these repulsive acts have occurred

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1 including the perversion of the Bible, can you justify to
2 yourself and to your faith that you could vote not guilty even
3 in light of the otherwise disgusting, repugnant acts?

4 PROSPECTIVE JUROR HUDSON: Yes, I could vote not
5 guilty if the facts are not proven.

6 MR. KAROWSKY: And do you promise that that's what you
7 will do if chosen as a juror?

8 PROSPECTIVE JUROR HUDSON: Yes.

9 MR. KAROWSKY: Okay. Could you tell me what your wife
10 used to do before she was retired.

11 PROSPECTIVE JUROR HUDSON: She did several things.
12 She first started as a chemist at Stanford Research Institute.
13 More recently, she was the administrative assistant at our

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14 church, and she was that for about ten years before she
15 retired the last time.

16 MR. KAROWSKY: Okay. And are you going to have any
17 problems -- are you going to have problems or be willing to
18 endure if the newspaper shows not guilty on technical charges
19 on any of these defendants? Can you go back to the people you
20 know and love who are in law enforcement and explain that you
21 had to vote the law rather than your own conscience?

22 PROSPECTIVE JUROR HUDSON: I can do that.

23 MR. KAROWSKY: Okay. And will you do that --

24 PROSPECTIVE JUROR HUDSON: Yes.

25 MR. KAROWSKY: -- if appropriate?

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1 PROSPECTIVE JUROR HUDSON: Yes.

2 MR. KAROWSKY: Thank you.

3 THE COURT: Any other questions for Mr. Hudson before
4 we proceed?

5 MR. LOCKE: No, Your Honor.

6 THE COURT: All right. Mr. Hudson, I'm going to ask
7 you to go back and the CS0, the court security officer will
8 show you the room that you're to sit in just for a few minutes
9 while we discuss whether you should come back for the next
10 phase of the trial.

11 PROSPECTIVE JUROR HUDSON: All right.

12 THE COURT: Thank you.

13 PROSPECTIVE JUROR HUDSON: Thanks.

14 (Prospective Juror Hudson departed courtroom.)

15 THE COURT: Mr. Hudson is outside the room.

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16 Before we proceed, could we make sure we're all on the
17 same page? Do you want to limit this examination to the
18 question that was addressed by the Ninth Circuit or do you
19 want to proceed on other grounds for challenge for cause
20 during this examination of these people?

21 MR. KAROWSKY: Your Honor, I'm not sure what the
22 Court's reference to the Ninth Circuit --

23 THE COURT: Well, we're talking about whether these
24 potential jurors can be fair in light of the allegations
25 having to do with sex. And Ms. Endrizzi was addressing some

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1 other questions, and if we're going to do that, that's fine.
2 I just want to make sure we're all on the same page, and when
3 we come back later some of you don't think that we're supposed
4 to address the other questions then and some of you think that
5 we addressed them now.

6 MS. WHITE: No. Your Honor, it's the government
7 intent that we address all the questions now.

8 THE COURT: All the questions of challenge for cause?

9 MS. WHITE: Correct.

10 THE COURT: Are we all on the same page?

11 MR. KAROWSKY: Absolutely, that's my understanding.

12 THE COURT: Okay. All right. Any challenge for
13 cause?

14 MR. LOCKE: No, Your Honor.

15 MS. WHITE: No, Your Honor.

16 THE COURT: All right. Bring Mr. Hudson back.

17 (Prospective Juror Hudson entered courtroom.)

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18 THE COURT: Mr. Hudson, you can stay back there. I'm
19 ordering you to return to this court at 9:00 a.m. on Tuesday,
20 January the 15th for further proceedings. The Clerk is going
21 to ask you for a phone number where we can reach you, and
22 she's going to give you her card which has the phone number
23 where she can be reached in case something comes up in the
24 meantime.

25 All right. Mr. Hudson, in the meantime, before you

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1 return to court on January the 15th, I'm instructing you not
2 to seek or receive any information about this case or any
3 issue that you think might be involved in this case and not to
4 discuss this case with anyone.

5 PROSPECTIVE JUROR HUDSON: All right.

6 THE COURT: All right? Thank you for coming, and
7 we'll see you on the 15th.

8 Bring in Mr. Sherwood.

9 THE CLERK: Yes, Your Honor.

10 (Prospective Juror Hudson departed courtroom.)

11 (Prospective Juror Sherwood entered courtroom.)

12 THE COURT: Mr. Sherwood, the lawyers are going to ask
13 you some questions now, and we're going to begin with one of
14 the attorneys for the defendants.

15 Mr. Locke is going to ask you some questions.

16 MR. LOCKE: Thank you, Your Honor.

17 Good morning, Mr. Sherwood.

18 PROSPECTIVE JUROR SHERWOOD: Good morning.

19 MR. LOCKE: My name is Bruce Locke, and I'm one of the

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20 defense attorneys in this case.

21 I want to tell you right up front having this
22 conversation with you is -- is difficult for me, as I expect
23 it is for you. And I want to tell you that if we met outside
24 this courtroom, we wouldn't be discussing these things.

25 PROSPECTIVE JUROR SHERWOOD: Okay.

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1 MR. LOCKE: But it's conceivable that you could be one
2 of the jurors deciding the facts in this case, and that makes
3 you the most important person in the courtroom right now.

4 PROSPECTIVE JUROR SHERWOOD: I want you to -- you to
5 move that mike up or speak up a little bit.

6 MR. LOCKE: Oh, okay. Sorry.

7 PROSPECTIVE JUROR SHERWOOD: Okay.

8 THE COURT: Okay. If you'll do the same, Mr.
9 Sherwood, then you'll both hear each other.

10 PROSPECTIVE JUROR SHERWOOD: Okay.

11 MR. LOCKE: All right. So you understand that you're
12 one of the most -- you're one of the most important people in
13 the courtroom right now.

14 PROSPECTIVE JUROR SHERWOOD: Certainly.

15 MR. LOCKE: All right. So I need you to answer the
16 questions, be brutally truthful about the answers. Okay? So
17 that we can make a fair judgment.

18 I know from your questionnaire you have kids.

19 PROSPECTIVE JUROR SHERWOOD: Yes.

20 MR. LOCKE: And you have stepchildren, also; is that
21 right?

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22 PROSPECTIVE JUROR SHERWOOD: Yes.

23 MR. LOCKE: And some members of your family have
24 experienced abuse.

25 PROSPECTIVE JUROR SHERWOOD: Yes.

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1 MR. LOCKE: Okay. And you know that this case
2 involves allegations of child abuse.

3 PROSPECTIVE JUROR SHERWOOD: Yes.

4 MR. LOCKE: And it's child abuse of a sexual nature.

5 PROSPECTIVE JUROR SHERWOOD: Yes.

6 MR. LOCKE: And that it involves allegations of men
7 having oral, anal, and vaginal sex with children as young as
8 seven years old. You understand that?

9 PROSPECTIVE JUROR SHERWOOD: I can't remember the age,
10 but I knew it was young.

11 MR. LOCKE: Well --

12 PROSPECTIVE JUROR SHERWOOD: Yes.

13 MR. LOCKE: And that some of the allegations involve
14 parents having sex with their own children.

15 PROSPECTIVE JUROR SHERWOOD: Yes.

16 MR. LOCKE: Given your personal experience with the
17 effects of child abuse, would -- would you be able to be fair
18 and impartial in this case?

19 PROSPECTIVE JUROR SHERWOOD: Well, I weighed that
20 pretty heavy the day you gave me that questionnaire, and I
21 think I summed it up pretty good at the back, I think it was
22 the back page or somewhere back there when I put it on there.
23 I was asked two questions that I think speaks to this.

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24 One question was what you just asked me, and I
25 answered that I thought that I could judge based on what I

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1 am -- what I see and what I am told. Don't really want to,
2 but I could. And if I heard something that I've turned out
3 and believed to be true, then I would look at it as being true
4 if I believed it to be true.

5 The second thing that I said -- and if I'm going
6 beyond bounds, please tell me. But the second thing that I
7 said was is that obviously this issue is something that has
8 influenced my life not last week, my life, and as a result of
9 that it's there. You can't ask me to come in this courtroom
10 and it not be there. It would be like asking me to come in
11 and forget how to drive. It's there, that's that.

12 MR. LOCKE: Right. And what I'm asking is, do you
13 think that your experience, your life experience that is part
14 of you, you can't get away from that, would affect you in such
15 a way that you would weigh things more heavily against the
16 defendants because of your own personal experience with it?

17 PROSPECTIVE JUROR SHERWOOD: I think that -- hard
18 question for me.

19 MR. LOCKE: Right.

20 PROSPECTIVE JUROR SHERWOOD: And I'll answer it. Give
21 me a second to work my brain here.

22 But I think that when you consider that I am who I am
23 and I come in here with what I come in here with, of course,
24 to some degree it's going to. But I wasn't kidding you when I
25 said if I believed it to be true, I'll believe it to be true.

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1 If I don't believe it to be true, I won't believe it to be
2 true.

3 MR. LOCKE: I understand that.

4 Let me use maybe a silly example, but do you follow
5 college football?

6 PROSPECTIVE JUROR SHERWOOD: No.

7 MR. LOCKE: Well, any sport.

8 PROSPECTIVE JUROR SHERWOOD: Okay. Whatever, yeah.

9 MR. LOCKE: Well, they don't let people from Ohio
10 State referee Ohio State football games.

11 PROSPECTIVE JUROR SHERWOOD: Right.

12 MR. LOCKE: Because they're -- they're who they are,
13 it's part of who they are, and it affects the way they think.

14 And I want you to be fair with me, your personal
15 experience with your family -- your wife was abused when she
16 was young?

17 PROSPECTIVE JUROR SHERWOOD: Very young.

18 MR. LOCKE: And your two stepdaughters were abused by
19 their father?

20 PROSPECTIVE JUROR SHERWOOD: Yes.

21 MR. LOCKE: And you have a daughter that was raped --

22 PROSPECTIVE JUROR SHERWOOD: Yes.

23 MR. LOCKE: -- right?

24 Those are part of you and those are going to -- that
25 experience in knowing that is going to affect how you think --

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1 PROSPECTIVE JUROR SHERWOOD: Yes

2 MR. LOCKE: -- about things, right?

3 PROSPECTIVE JUROR SHERWOOD: Correct.

4 MR. LOCKE: And so let me give you an example. If the
5 evidence in this case was that -- well, let me tell you what
6 the government has to prove.

7 The government has to prove in this case that the
8 defendants transported or aided in the transportation of a
9 person under the age of eighteen across state lines with the
10 intent that the person engage in criminal sexual activity.
11 And criminal sexual activity would be having sex under the age
12 of eighteen. Okay?

13 But what I want you to focus on is that one of the
14 elements is that the defendants intended that to occur at the
15 time that the child was transported across state lines.

16 Now, if the evidence was clear that sexual activity
17 did occur, in other words, the -- a defendant had oral sex,
18 anal sex, and vaginal sex with a 14-year-old, but there was no
19 evidence that the defendant intended that at the time that the
20 child was transported across state lines, would --

21 PROSPECTIVE JUROR SHERWOOD: That's a very specific
22 question.

23 MR. LOCKE: Right. And it's -- it's important because
24 would you be able to acquit, vote to acquit someone who you
25 knew molested the child, but where one of the elements wasn't

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1 proven?

2 PROSPECTIVE JUROR SHERWOOD: Well, got asked that
3 question this morning. And this very narrow specific question
4 that you've asked me here is, is -- yes, I -- yes. Because if
5 that's what I'm really charged at and I'm not charged with
6 looking at the other, I suspect had I had been one of those
7 people in my past, it probably would have been a little --
8 even more difficult for me. I would not be happy about it, I
9 wouldn't like doing it if I believed one side and yet had to
10 acquit on another side. I wouldn't be happy about that, but
11 could I do it? Yes. Would I want to? No, but I could.

12 MR. LOCKE: What -- do you think you would have
13 difficulty telling your wife and your daughters and your
14 stepdaughters that --

15 PROSPECTIVE JUROR SHERWOOD: No.

16 MR. LOCKE: -- you had voted to acquit in that kind of
17 a situation?

18 PROSPECTIVE JUROR SHERWOOD: No. No. Because his job
19 is to tell me the restraint of what I can judge. If I -- if I
20 do what he tells me and I believe it and I say that, then, no,
21 I wouldn't have any trouble.

22 I think also, if you'll read in there, my wife is a
23 therapist, and she's been involved in this system most of her
24 professional life. And she's been called to court to testify,
25 she's been forced to testify, and she has dealt with some

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1 horrendous cases that I peripherally kind of knew a little bit
2 about. So, you know, does it -- even with hers, does it -- is

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3 she able to maintain some decorum and some distance when she
4 comes home and says, boy, I've really had a tough one today
5 and this is kind of why? Yes, she can. And can I? Yes.

6 I'm an intelligent person, I can take a look at this.
7 And if it says A, B, C and D and I get to look at A, B, C and
8 D, I can do that.

9 MR. LOCKE: I noticed in your questionnaire that you
10 checked the box that you would give greater weight to I think
11 it was police officials, is that correct, if they testified?

12 PROSPECTIVE JUROR SHERWOOD: Well, certainly. Greater
13 weight, I don't know what you -- again, you're doing really
14 good at these specific questions. Put a specific question
15 behind that, because of course I am. I mean, a policeman
16 pulls me over alongside the road, I'm going to give that dude
17 some weight, you bet I am. So just by virtue of the fact that
18 he has been given a badge, I'm going to give him weight. So
19 what are you asking me?

20 MR. LOCKE: Well, that's what I'm asking. Just
21 because he's given a badge or he works for the FBI, you would
22 treat his testimony as entitled to more weight than a regular
23 person getting up on the stand just by the fact that -- what
24 his job is.

25 PROSPECTIVE JUROR SHERWOOD: Okay. Well, let me try

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1 to answer that one.

2 You know, I've been alive for the last few years, and
3 I went through the O. J. Simpson thing. And I went through the
4 gal that drove her kids off into the pond and stood up and

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5 begged people to find them and bring them home. And I -- and
6 all that is out there. So there -- of course, there is some
7 level of skepticism in me about anything that I hear. The
8 older I get, I tend to be a bit more skeptical of things that
9 I hear.

10 If a police official or an FBI agent stood up here and
11 I honestly believe that there was no connection between them,
12 that there was no benefit and I believed that, that there was
13 no benefit for them to sit up here and lie, and they told me
14 that this fact is true based on the fact that they found this
15 or they seen this or they done that or they pulled this person
16 over here, then I would tend to put that on the side of the
17 category of saying, okay, well, I gotta look at that very
18 seriously because there's some facts that was given to me.
19 And I assume that you aren't going to let them give me
20 bullshit, you're going to see to it they give me facts.

21 MR. LOCKE: Well, sometimes there's a dispute as to
22 the facts.

23 PROSPECTIVE JUROR SHERWOOD: Yeah.

24 MR. LOCKE: And what I'm asking is, would you tend to
25 believe the police officer because he is a police officer over

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1 someone who isn't a police officer? I think what you're
2 telling me is --

3 PROSPECTIVE JUROR SHERWOOD: At the moment of final
4 decision you're saying?

5 MR. LOCKE: Yes.

6 PROSPECTIVE JUROR SHERWOOD: It comes down to, like,

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7 one thing. Here this person says, you know what, I didn't do
8 it, and this person says he did it. And I'm going to say, oh,
9 well, he must have done it, this guy said he did it is what
10 you're asking me. Well, I can't see that it's going to come
11 down to that.

12 I suspect -- I was told this trial is going to last up
13 to nine weeks. There's no way in heck I want to be here for
14 nine weeks. But if this trial did last nine weeks, there's
15 going to be a whole lot of stuff for me look at over whether
16 or not this particular police officer stood up and said he did
17 it because I knew he did it because I seen this piece of
18 paper, I think there's going to be a lot more to look at than
19 that.

20 MR. LOCKE: Okay. Why did you say you weren't going
21 to be here nine weeks?

22 PROSPECTIVE JUROR SHERWOOD: I didn't say I wasn't
23 going to be. I said I don't want to be here.

24 THE COURT: He said he didn't want to be here.

25 PROSPECTIVE JUROR SHERWOOD: I don't want to be here

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1 nine weeks. I mean, I'm trying -- you told me to be honest.
2 I'm being honest.

3 MR. LOCKE: No, I appreciate that. I appreciate that.

4 THE COURT: If we find somebody who says they want to
5 be here nine weeks, then we're going to question whether
6 they're honest.

7 PROSPECTIVE JUROR SHERWOOD: What's wrong with them,
8 huh?

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9 THE COURT: Including me and including all three
10 lawyers.
11 MR. LOCKE: Okay. But what it comes down to is, you
12 know, there are some cases where people, due to their own
13 personal experience, they wouldn't be the best judges of the
14 facts for that particular case. And what I'm concerned about
15 is your personal experience.
16 You love your daughters, right?
17 PROSPECTIVE JUROR SHERWOOD: Yes.
18 MR. LOCKE: You love your wife.
19 PROSPECTIVE JUROR SHERWOOD: Yes.
20 MR. LOCKE: You love your stepdaughters.
21 PROSPECTIVE JUROR SHERWOOD: Yes.
22 MR. LOCKE: And I imagine that you have very, very
23 specific and antagonistic feelings about the people who hurt
24 them; is that right?
25 PROSPECTIVE JUROR SHERWOOD: Antagonistic?

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1 MR. LOCKE: You don't like the people who hurt them.
2 PROSPECTIVE JUROR SHERWOOD: Of course not.
3 MR. LOCKE: Okay. Do you hate the people who hurt
4 them?
5 PROSPECTIVE JUROR SHERWOOD: Most of them I don't
6 know, but --
7 MR. LOCKE: Okay. But you wouldn't like them.
8 PROSPECTIVE JUROR SHERWOOD: No.
9 MR. LOCKE: And --
10 PROSPECTIVE JUROR SHERWOOD: Conversely, at the same

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11 time, that doesn't mean that 20 years later I couldn't see
12 them being somebody else, because time does go on.

13 MR. LOCKE: You couldn't see them being somebody else?

14 PROSPECTIVE JUROR SHERWOOD: They could -- people --
15 they could change. Maybe I didn't like this person. Doesn't
16 mean that that person is still the same 10 years, 20 years
17 later.

18 MR. LOCKE: Okay.

19 PROSPECTIVE JUROR SHERWOOD: So maybe I'd like them
20 here. I don't -- maybe I could get on with that, I don't
21 know. I don't know. I just haven't been faced with that
22 situation at all so I don't know.

23 MR. LOCKE: Okay. So are you telling me that you
24 think you could be as fair as any other person in judging the
25 facts in this case?

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1 PROSPECTIVE JUROR SHERWOOD: Well, two-part answer.
2 One side of me says I probably would be more fair because I
3 have a basis of a lot of information. The other side of me
4 says you have to trust whether or not that information is
5 going to go your way. I don't know. You know, I told you --
6 I answered him by not raising my hand, and I've answered you
7 several times. If you show it to me, I'll look at it. If you
8 don't show it to me, then I'm going to -- I'm going to look at
9 what I do get shown.

10 MR. LOCKE: Okay.

11 PROSPECTIVE JUROR SHERWOOD: I don't know how else to
12 put that. I don't know how else to say it.

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13 I don't know that I'm better than anybody else to
14 judge this situation or that I am worse. I'm certainly
15 someone that has some experience in it, and I've seen the
16 fallout. And I've lived with a woman for 35-plus years now
17 who was sexually abused for many years starting when she was
18 five years old. And -- and I know today right now at sixty
19 some years old, I know her, and I know that there's certain
20 things in the house I can't do because -- I can't pull a blind
21 down a certain way. I know all those facts. So in certain
22 ways, I feel like I have a lot of information about what these
23 kinds of things do. But, nonetheless, I don't think that's
24 what I'm -- would be here for.

25 I would be here to listen to what happened with this

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1 case, what happened with these people and whether or not, as
2 you put it -- because you drew a very narrow line. I don't
3 know. She may tell me something different in a minute, I'm
4 not sure, but you drew a very narrow line. Did they go across
5 the state line? Did they know what they were doing when they
6 went across the state line? Well, that's kind of like did a
7 guy speed or did he not speed? You know, I mean --

8 MR. LOCKE: All right. But what you're telling me is
9 that your experience over your lifetime with your own family
10 and knowing the effects of what happens to those people as a
11 result of abuse, that you know those facts, and those facts
12 that you know would affect the way you look at this case.
13 They have to; isn't that right? You can't put them aside
14 truthfully. I mean, they're part of you, aren't they?

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15 PROSPECTIVE JUROR SHERWOOD: Well, of course they're
16 part of me. And I was -- I was so gut level honest when I
17 wrote that thing to you guys at the end of that. I was pretty
18 blunt about that. I am who I am and I am what I am.

19 However, sir, let me attempt to do this one more time.
20 If I believe that someone didn't do what they were accused of
21 doing, I would not want to see them go to jail. I -- I would
22 struggle with the decision to send them to jail. If you'd
23 have got me 15 years ago, I'd have said hang the son of a
24 bitch, but it's not 15 years ago. I'm 58 years old, I have
25 more -- I'm a little softer, a little rounder around the

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1 edges. I don't want to see somebody get convicted of
2 something that's not correct for them. And if I come right
3 down to it and I believe that -- that what you have narrowly
4 defined for me is true, I wouldn't be opposed to throwing the
5 damn book at them either if I had the book to throw.

6 So I don't -- I mean, does that answer your question?
7 I'm beginning to get the feeling that what you really want to
8 do is throw me off. Well, please feel free to do so. I want
9 to go home anyway.

10 MR. LOCKE: But -- no, I want to know if there is a
11 reason why you shouldn't be in this case. That's true, I want
12 to know if there's a reason. And it strikes me that from your
13 questionnaire that it's going to be very difficult for you, I
14 think impossible for you to put that aside, your history aside
15 in a case where you knew, was dead certain that the abuse
16 occurred, that it was an adult having oral sex with a

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17 7-year-old or anal sex with a 7-year-old, that I don't think
18 you'd be able to put your -- your history aside and say, well,
19 I'm going to -- I'm going to vote to acquit those people
20 because there's no evidence that they intended it --

21 PROSPECTIVE JUROR SHERWOOD: Well, that's --

22 MR. LOCKE: -- at that particular time.

23 PROSPECTIVE JUROR SHERWOOD: -- kind of funny because
24 I'm sitting up here saying one thing and you're standing out
25 there saying another thing for me. So I think I've answered

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1 that question several ways. I don't know how else to answer
2 it.

3 I mean, you know, I tend to think that had I come into
4 a situation with -- with people -- members of my family and
5 they had been hurt and abused, and then I just went my life
6 and I lived my life and that was just that, but I always had
7 this here, I tend to think that I would view it one way. I'm
8 going to put this to an analogy not quite as good as your
9 sports analogy, but let me try a different one here.

10 If I didn't -- if I went to high school and I got all
11 the education I can get in high school and I went through my
12 life and lived my life, I'm only going to be a certain amount
13 of smart. If I went to college, I'm going to get more smarts.
14 I'm going to be able to think differently, I'm going to be
15 able to view things differently because I expanded my
16 knowledge base as I was doing it.

17 In this case, not only did I come into a family where
18 there had been horrendous sexual abuse and -- with my wife,

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19 bad sexual abuse, stopped with my stepdaughters, if I stopped
20 right there I think that I would then live my life and I would
21 be very tainted by what I had heard and I'd have my feelings
22 about it, but it didn't stop there.

23 Throughout my life, this has been there. It's -- it's
24 always been there because my wife worked in a situation to
25 where sometimes she would have to come home, absolutely have

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1 to come home and talk to me and debrief and kind of calm
2 herself and pull herself back down, and I was then charged in
3 many cases with grounding her again. So I don't think I could
4 be any more desensitized if you wanted to put it up on the
5 screen and show it to me. I'm pretty damn desensitized. I've
6 been -- I've been there, I've seen it, I've heard it. I
7 haven't seen it, I've heard it, and I have been knowledgeable
8 of it. And -- and I just wish it would stop, damned I wish it
9 would stop because I've seen so many people or heard of or
10 kind of knew about, most of which I don't even have a face to
11 put on or a name to put behind them, but so many people that
12 were hurt, I just wish it would stop. And if I could just do
13 something to stop it, I would, but I can't. You know, I
14 can't, but I've been extremely desensitized to it.

15 So if you're asking me just because of the virtue of
16 the fact that my wife was sexually abused, by the way not to
17 the degree that you're talking about here, but certainly
18 here, the result's pretty much the same. Is that going to
19 stop me from being able to do what I need to do? Well, like I
20 said, I've been desensitized. It's not just my wife, it's

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21 everything that I've been involved or come into contact with
22 in any way, shape or form.

23 Is that thorough enough? No.

24 MR. LOCKE: It's pretty thorough, but not enough.

25 PROSPECTIVE JUROR SHERWOOD: Okay. Good.

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1 MR. LOCKE: The -- let me put it this way.

2 If you went into the jury room --

3 PROSPECTIVE JUROR SHERWOOD: Yes, sir.

4 MR. LOCKE: -- and you knew that one or more of the
5 defendants had committed the type of abuse that I've described
6 to you, would you be able to face that those defendants would
7 walk away free based upon your verdict?

8 PROSPECTIVE JUROR SHERWOOD: Am I voting in a block?
9 I mean, do I take, like, three or nothing? I mean, you said
10 one or more.

11 MR. LOCKE: One or more.

12 PROSPECTIVE JUROR SHERWOOD: So I can let -- say,
13 well, this guy -- I don't think this guy was, but I think this
14 guy was and I think this guy was, can I do that?

15 MR. LOCKE: Let's just make it one defendant.

16 PROSPECTIVE JUROR SHERWOOD: Okay. One defendant.
17 That's good.

18 MR. LOCKE: One defendant that you know had oral,
19 anal, and vaginal sex with a child as young as seven, and --
20 but there's no evidence that that was intended at the time the
21 child crossed state lines, would you be able to vote to acquit
22 knowing that that defendant was going to walk away free the

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23 next day?

24 PROSPECTIVE JUROR SHERWOOD: Have I not said yes to
25 that? Let me say yes, I could. Would I like it? No. Would

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1 I want to? No. But could I? If you prove it, you put it in
2 front of me and I believe it -- that's really the whole crust
3 of this thing, you gotta make me believe it. I don't know.
4 Do you trust me to believe it or not? I guess that's up to
5 you.

6 MR. LOCKE: Well, let me -- you're shifting it. It's
7 the government's burden to prove that the defendant intended
8 that.

9 PROSPECTIVE JUROR SHERWOOD: Well, true.

10 MR. LOCKE: Okay. I don't have --

11 PROSPECTIVE JUROR SHERWOOD: I got that part. I kind
12 of -- I've watched all the TV shows, I know what their job is.

13 MR. LOCKE: It's -- it's not always like a TV show.

14 PROSPECTIVE JUROR SHERWOOD: I got that part. I got
15 it.

16 MR. LOCKE: And you said you want it to stop, you want
17 child abuse to just stop.

18 PROSPECTIVE JUROR SHERWOOD: Sure I do. You're damn
19 right I do.

20 MR. LOCKE: All right. So would you really be able to
21 let a defendant walk out free who you knew had committed these
22 acts of abuse? Would you really be able to do that?

23 PROSPECTIVE JUROR SHERWOOD: Okay. What's your name
24 again?

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25 THE COURT: Judge Shubb.

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1 PROSPECTIVE JUROR SHERWOOD: Judge what?

2 THE COURT: Shubb, S-H-U-B-B.

3 PROSPECTIVE JUROR SHERWOOD: The judge here sit up
4 here and he said, I'm going to tell you the perimeters by
5 which you get to go in the room, you don't get to look at
6 this, this and this is what I interpreted from what he said.
7 You don't get to look at that, although it may be there. What
8 you have to look at is we're sitting here and we're saying
9 this person is charged with taking this -- according to you,
10 taking this child across a state line with the intention of
11 sex somehow occurring and having fore knowledge of it. I
12 don't know if those are two charges or one charge, I don't
13 know that.

14 But -- but if he said, I'm going to tell you that you
15 can only look at that, you can only make a decision based on
16 that, and this is the law that allows you to make that
17 decision and the different -- whatever he's going to tell us,
18 I don't know. I've never served on a jury before, so -- I
19 always just used to walk in and they'd say do you want to
20 serve and I'd say, no, I'm a contractor and they'd let me go
21 home. You guys are being very thorough here.

22 So if he puts those perimeters in front of me, and I
23 believe in who I am and I believe in what this is and I
24 believe in this country and what we stand for, how the hell
25 could I not do what I was told to do? How could I not do

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1 that? How -- I don't know. It's -- it's -- the answer to
2 your question is yes. I would then assume that it would be
3 somebody else's responsibility besides me to take on the issue
4 of the sex having occurred. It would be somebody else's
5 responsibility to bring charges to this person for having the
6 various types of sex acts that you're talking about with a
7 young child. I would assume that that was going to be dealt
8 with. I don't know that it would be, but I would assume.

9 Because if I only get to deal with my part, I'll deal
10 with my part. If somebody else gets to deal with their part,
11 then let them have at it. Honestly I'd rather deal with this
12 part than that part. That's not -- that's not going to be an
13 easy one if those charges ever come forth. Anyone sitting
14 there is not going to like what they're having to go through,
15 including me. I wouldn't like it either.

16 I don't know how -- I mean, like -- I could ask God if
17 he'd come down and validate for you and tell you that I'm a
18 good guy, but I don't know what the hell else to say to you.

19 MR. LOCKE: No, I can tell from your answers that
20 you're a good guy.

21 PROSPECTIVE JUROR SHERWOOD: Thank you.

22 MR. LOCKE: I have no doubt about that. And I have no
23 doubt that you would try to do the right thing. Okay.

24 PROSPECTIVE JUROR SHERWOOD: Yes, I would.

25 MR. LOCKE: But, like you, I've had some life

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1 experience, and sometimes people try to do the right thing but
2 they're -- they just can't do it. And what I'm trying to
3 satisfy myself about by asking a lot of questions is are you
4 the good guy who can actually do it or are you just, you know,
5 telling me you're going to try to do it?

6 PROSPECTIVE JUROR SHERWOOD: I guess the only way, the
7 only way that that becomes an issue for me is between the two
8 of you or the four, five, six or how many of y'all sitting out
9 here that your job is to present to me so that I can make a
10 good decision. It's a whole lot more about you than it is me
11 to be honest with me in my opinion. I think you're either
12 going to give me the information I need or you're not.

13 Now, I guess maybe this is what I'm sort of thinking
14 maybe what you're saying to me. Let's say that I listen to
15 everything that the three attorneys over here have to say and
16 all the people up here have to say, I listen to everything I
17 think the two attorneys over here have to say and all the
18 people they put up here to say, and it's right smack in the
19 middle, I can't really determine in my mind is it true or is
20 it not true. That would be a terrible spot to be standing in.
21 I would feel that somebody out in this room totally failed at
22 their job if that's the case. I would like somebody out in
23 this room to give me some clear information by which I could
24 make a decision, and then it would -- I would be able to make
25 such a decision.

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1 But if it drew -- if it fell right down the middle of
2 the line and there was no information out there that could
3 over weigh the other, absolutely none, I'd be really stuck
4 with a bad decision. I think I'd probably have to say I can't
5 make one, you didn't give me enough information, you need to
6 go back to the bulletin board on this one.

7 THE COURT: Well, I might be able to help you in a
8 decision like that, because you haven't heard my instructions
9 on the law yet and you've never sat on a jury before.

10 But in a criminal case, the burden is upon the
11 government --

12 PROSPECTIVE JUROR SHERWOOD: Yeah.

13 THE COURT: -- to prove the elements of the crime, and
14 their burden is to prove all the elements beyond a reasonable
15 doubt. So if there's not evidence, then it is your duty to
16 find the defendant not guilty because the government has the
17 burden of presenting the evidence.

18 PROSPECTIVE JUROR SHERWOOD: Beyond a reasonable
19 doubt.

20 THE COURT: Right. So knowing --

21 PROSPECTIVE JUROR SHERWOOD: So clearly not an
22 on-the-line type issue.

23 THE COURT: Right.

24 PROSPECTIVE JUROR SHERWOOD: Well, then I would be
25 able to stand here and say let him go, and I would hope to God

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1 that outside that door out there there was a police officer
2 prepared to deal with the other issues. Now whether there was

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3 or not unfortunately wouldn't be at my call, I wouldn't have
4 anything to do about that. If the acts occurred, then I
5 think -- I hope some day that that gets faced.

6 If they didn't occur as you narrowly stated to me, and
7 these two ladies are unable to show me beyond a reasonable
8 doubt -- see, you keep asking me these marginal questions and
9 what we're really asking me here is is that there's a -- to
10 use one of my TV words, a preponderance of the evidence that
11 says, yes, okay, then it's yes.

12 MR. LOCKE: Okay. The problem, Mr. Sherwood, is that
13 sometimes it becomes a close question as to whether or not
14 it's beyond a reasonable doubt.

15 PROSPECTIVE JUROR SHERWOOD: Okay.

16 MR. LOCKE: And what I'm asking you is, if it is a
17 close question because of your history, aren't you going to
18 come out in favor of convicting the defendants?

19 Isn't that what you meant --

20 PROSPECTIVE JUROR SHERWOOD: Okay.

21 MR. LOCKE: -- when you said you would have trouble
22 applying the presumption of innocence in this case?

23 THE COURT: He didn't say he would have --

24 PROSPECTIVE JUROR SHERWOOD: Where did I say that?

25 MR. LOCKE: It may be hard, this may be hard.

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1 PROSPECTIVE JUROR SHERWOOD: Well, I've said that
2 about how many times up here today. It would be hard, I've
3 said that how many times. Of course it would be hard.

4 But, again, if it's a matter of a question as to

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5 whether or not I believe there is a -- the case has been
6 proven beyond a reasonable doubt, isn't that not proving it
7 beyond a reasonable doubt?

8 I mean, honestly I don't know how else to say this to
9 you. I don't have to like the defendants in this case. I
10 have to make a decision -- going back, again, to the narrow
11 line of which you gave me, that's all I have to do. I get to
12 go home and take a shower and feel great and eat dinner that
13 night and know that I did my job. Now, if I go home and I
14 pick up the newspaper and find out that you guys manipulated
15 the hell out of me, I'm going to be really mad at you, too.
16 But nonetheless it ain't mine, it's yours. I base it on what
17 you give me to base it on. And I said at the end of this
18 thing, could I -- you asked me flat out, can I make this
19 decision, and I said yes.

20 MR. LOCKE: I know you can make the decision. Can you
21 make it fairly without being influenced by your personal
22 history?

23 PROSPECTIVE JUROR SHERWOOD: You didn't need to bring
24 me back. I said on the last page that my personal history is
25 me. And will it be here? Yes. Now, if they don't prove that

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1 they knew that they were taking them across the state line,
2 then they're not guilty if that's what the case is.

3 It's like I was honest with you because you asked me
4 specific questions on that questionnaire. I've been since
5 then sitting here today and tried to explain to you that, you
6 know, my life spans all of that. And there has been a

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7 desensitization in my life. It's not that I'm so horrified as
8 to what happened, I am horrified that it continues to happen
9 all the time. I'm horrified that -- of the people that
10 continue to come forward with this kind of an issue, and I
11 wish to God there was something I could do to stop it. I'm
12 very horrified about that, not what happened. I'm not
13 horrified about that any more, I've finally desensitized to
14 it.

15 So it almost sounds to me like if you want to put some
16 witnesses up here to give us a bunch of really beautiful
17 graphic stuff to listen to, I hope you don't, because if what
18 you're really trying to prove is that they did or didn't cross
19 that line, then give us that information and let us make a
20 decision about it. And I'll go in this room back there, and I
21 will sit there with 11 or however other many people you want
22 to stick back there, and we're going sit there, and we're
23 going to talk about it, and we're going to reach our decision
24 as it needs to be reached.

25 I'm not going to try to say to everybody, well, you

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1 know, my wife was abused when I was a kid and everybody that
2 does that is guilty, I don't give a shit what you say. That
3 ain't what I'm there for. It's going to be me making my
4 decision, and it's going to be me listening to you guys, and
5 it's going to be me listening to the rest of the jurors, and
6 then we have to make a decision as I understand it, not me.

7 MR. LOCKE: Okay. I have no more questions, Your
8 Honor.

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9 THE COURT: Anybody else?
10 MR. KAROWSKY: Just a couple of brief ones.
11 THE COURT: All right. Mr. Karowsky is going to ask
12 you some questions now.
13 PROSPECTIVE JUROR SHERWOOD: I'm amazed you have more
14 to ask.
15 MR. KAROWSKY: True, but --
16 THE COURT: Maybe it's another subject.
17 MR. KAROWSKY: I respect -- I respect your candor. I
18 think it's as refreshing as I've seen in all the years that my
19 hair has turned gray, but I'd like to focus this.
20 Do you understand there is going to be some -- there
21 is going to be evidence in this case about sexual abuse
22 repeated on a daily basis, probably for ten years with
23 multiple children on oral, anal, vaginal sex? We're not just
24 talking about a few times of touching. We're talking about
25 repeated, revolting, disgusting sex over ten years by at least

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1 the males and in some times with my client, one of the male's
2 wives.
3 And it's documented. It's documented in documents.
4 There's no question that that's going to be documented. This
5 is not a did they do it, that's documented.
6 Do you understand that?
7 PROSPECTIVE JUROR SHERWOOD: I understand what you
8 just told me.
9 MR. KAROWSKY: Now, the law says that my client is
10 presumed innocent, and the TV tells us that people are

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11 found -- are found innocent. People are found not guilty.

12 There's a dramatic difference between innocence and guilt.

13 Now what I'm telling you right now is that there's
14 going to be evidence that these people, these defendants
15 documented in detail on computers and it's typewritten the sex
16 that they were having with the 7-year-olds and the 8-year-olds
17 and the 12- and the 13- and the 14- and the 16-year-olds on a
18 daily -- frequently on a daily basis.

19 Can you sit here and presume that each of these people
20 have -- are completely snow driven innocent?

21 THE COURT: Well, wait a minute.

22 PROSPECTIVE JUROR SHERWOOD: Yeah, of what? What are
23 you asking me?

24 MR. KAROWSKY: Of the charges that they face.

25 THE COURT: But, wait. You've given him -- you can't

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1 ask a question like that. You can ask him if he -- if as he
2 sits here he can presume they're innocent. But when you give
3 him a bunch of facts and then ask him to make an assumption
4 that they're innocent based upon facts, you can't ask the
5 question that way.

6 MR. KAROWSKY: All right. I'll rephrase it. The
7 facts are going to show --

8 PROSPECTIVE JUROR SHERWOOD: Can I ask you a quick
9 question?

10 MR. KAROWSKY: Sure.

11 PROSPECTIVE JUROR SHERWOOD: Are you -- am I correct
12 in assuming that you are here defending the same charges that

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13 he's here defending?

14 MR. KAROWSKY: Basically. Basically. But what I'm
15 saying is that the facts that you're going to -- that I'm
16 talking about, the sex is only tangentially related to the
17 substantive charges of transporting these kids across state
18 lines. So once you hear the sex, can you separate that and
19 still presume that on the charges that they face, the crossing
20 state lines, that they're presumed innocent?

21 PROSPECTIVE JUROR SHERWOOD: Well, I must say, you
22 certainly get right to the point, and I do not feel good right
23 this second having heard what you just said.

24 MR. KAROWSKY: I understand.

25 PROSPECTIVE JUROR SHERWOOD: I do not feel good

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1 physically, physically do not feel good. And --

2 MR. KAROWSKY: Let me interrupt you for a second, sir,
3 because I respect your candor.

4 We're talking about -- we're talking about that man
5 right there with the white hair sticking his penis in a
6 7-year-old's anus repeatedly and documenting it. You got that
7 image?

8 MS. WHITE: No, I'm going to object.

9 PROSPECTIVE JUROR SHERWOOD: Please.

10 MS. WHITE: Mr. Karowsky is setting forth facts that
11 I'm not even aware of.

12 THE COURT: Well, I don't know whether you are or not,
13 but there is some useful purpose to be served by asking
14 graphic questions so that we can determine whether any juror,

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15 not just Mr. Sherwood here, can sit through that kind of
16 evidence and still be able to focus on the issues in the case.
17 And I was going to ask you that question myself if Mr.
18 Karowsky didn't.

19 If there's graphic evidence of the type that he has
20 just described, can you sit through the trial listening to
21 that evidence and still be able to focus on the issues that
22 you have to decide?

23 MR. KAROWSKY: And, Your Honor, may -- I appreciate
24 that. May I take it further.

25 And I -- Mr. Locke said it, and it's revolting. I am

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1 not -- I am an advocate, but I'm also a human being, and it's
2 revolting. It's just revolting. I'm not here to tell you
3 that I believe anything other than that. But I think until
4 one gets it in their mind, we're not just talking a graphic
5 image. We're talking about grown parents putting their
6 penises in their children's mouth, in their anus, and in their
7 vagina, and couching that and justifying it and believing it
8 in the sake of God. And they documented it on a daily basis
9 in computers and sent it back and forth to each other.

10 How does that make you feel, sir? It makes me feel --

11 THE COURT: Let's not hear how it makes you feel.

12 MR. KAROWSKY: How does that make you feel, sir?

13 PROSPECTIVE JUROR SHERWOOD: I already answered that
14 question. It -- I do not feel good as a result of this.

15 Now, give me a moment, because you covered from here
16 to probably Wyoming. Give me a second here.

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17 MR. KAROWSKY: Please do.

18 PROSPECTIVE JUROR SHERWOOD: I suspect if I
19 understood -- if I got a question out of what you said, it was
20 kind of hard, I had to work at it, but if I got a question out
21 of what you said, if you came in here or if they came in
22 here -- I assume they're going to do that. I sure don't think
23 you'd be wanting to be putting it up on the screen too
24 quickly.

25 But if they came in here and they put up a bunch of

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1 graphic information, and then 15 minutes later you have any
2 belief in your mind that I would be able to sit there with
3 this open mind and listen to some other direction of
4 information being given to me, probably not. I don't think
5 anybody in the dang box would be able to. If you put it -- if
6 you tuck it close together, you're probably going to lose the
7 second portion because my mind and my body and my stomach is
8 going to be feeling one way at that moment.

9 I would assume that's your guys' job to see to it that
10 that's put in a way that we have at least a little bit of
11 time -- because we don't get to object over here, a little bit
12 of time to sort of settle back down after that kind of
13 presentation.

14 I also want to say to you that any and everything that
15 you've just said to me, this is not new. I don't like it. I
16 don't want this job. But if I -- I can't sit in this box and
17 say to you I want it to stop and then come up here and sit in
18 this box and try to figure out some damn way to get out of

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19 this trial. I have to be honest with you. I have to be
20 straight and honest with you.

21 But if -- nothing you've said to me is like, oh, my
22 God, does that really go on? Can that be true? And -- and
23 have I ever previously visualized? Yes, of course I have.

24 MR. KAROWSKY: Okay.

25 PROSPECTIVE JUROR SHERWOOD: And it is disgusting.

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1 MR. KAROWSKY: It is. And I'm not trying to shock
2 you, what I'm trying to say is this.

3 PROSPECTIVE JUROR SHERWOOD: Oh, I think you're trying
4 to shock me. I feel like I'm shocked.

5 MR. KAROWSKY: I'm not trying to shock you, I'm trying
6 to get the image in your mind.

7 What we're looking for, sir, is you said, you know, do
8 I want this job, and the point is that you don't necessarily
9 have to have this job. I'm satisfied that you're a fair and
10 honest man in every respect. I think if we had a burglary
11 case here, we wouldn't be having any of this discussion, I'd
12 take you in a second.

13 But the point is that you come in -- what we're
14 looking for are judges, we're not looking for advocates.
15 We're looking for people who can sit and be absolutely fair
16 and impartial and in fact have an open mind.

17 PROSPECTIVE JUROR SHERWOOD: Okay.

18 MR. KAROWSKY: And the question is in this case are
19 you a judge for this case as opposed to the burglary case?

20 And let me just focus it this way. I want you to

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21 imagine that you're sitting as a defendant here, you're on
22 trial for these charges. Do you want a juror who has the
23 state of mind of William Sherwood to be sitting in the box
24 voting on your case?

25 THE COURT: The way the question has to be asked is if

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1 you were sitting in the position of a defendant in this case
2 or if you were sitting in the position of the United States
3 Attorney charged with the duty of presenting the evidence on
4 behalf of the United States, would you be satisfied to have
5 the case heard by 12 jurors who are in the state of mind that
6 you presently have?

7 MR. KAROWSKY: Thank you.

8 PROSPECTIVE JUROR SHERWOOD: And I answer that by
9 saying I have to take everything that's been said here this
10 morning in answering that question. It's been very narrowly
11 focused for me what this case is. I tend to think that
12 there's two sides of it.

13 If you honestly were talking about -- if I was in on
14 the trial where we were judging what you say is already
15 bald-face, flat-down proven, and yet you wanted to prove it
16 some more and I was on that jury, well, no, you probably
17 wouldn't want me on that jury. You probably wouldn't want me
18 when I'm looking at the computer printouts and like, you know,
19 that line I was talking about, it's like it's all over here
20 and there's nothing over here, you probably wouldn't want me
21 on that one. But that isn't what I understand.

22 MR. KAROWSKY: Because that's not the kind of case

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23 that you with your background and what you bring in here can
24 be fair on.

25 PROSPECTIVE JUROR SHERWOOD: No, that's not the

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1 kind -- you presented it, I didn't.

2 MR. KAROWSKY: I understand.

3 PROSPECTIVE JUROR SHERWOOD: You presented to me these
4 people are guilty and would I --

5 MR. KAROWSKY: No, let me --

6 PROSPECTIVE JUROR SHERWOOD: You told me that --

7 MS. WHITE: Objection, Your Honor. May he finish?

8 THE COURT: Yeah, I know what he's going to say and
9 he's right, Mr. Karowsky. The way you put it, that's why I
10 stopped you from asking the question the way you were going to
11 put it.

12 And I think what Mr. Karowsky wanted to focus on was
13 the interstate aspect of the case --

14 PROSPECTIVE JUROR SHERWOOD: Right.

15 THE COURT: -- the subject that Mr. Locke talked to
16 you about previously.

17 And I think, if I'm not mistaken, what Mr. Karowsky
18 wanted to ask you was, whether you would be able to focus on
19 the interstate issue in the case even though the evidence on
20 the other issues that he's talked about may be so graphic, so
21 disgusting, may be even more graphic and more disgusting than
22 he's described it, would you still be able to focus on the
23 issues in the case?

24 PROSPECTIVE JUROR SHERWOOD: Well, I kind of thought I

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25 answered that, but -- when I said that, you know, life's been

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1 kind of desensitizing for me.

2 I'll be honest with you, if I haven't already, but
3 I'll be honest with you when I -- when I was here last month
4 and I sat in that same seat I was in this morning and I had a
5 very, just a teensy little tidbit of what was going to be
6 going on here, I wasn't happy with the fact that I was sitting
7 in this courtroom. But today what you're asking me is a
8 totally different thing. Because all I'm saying to you is is
9 that if you -- if you need to give me the graphics, which
10 don't give me any more than you have to please, I don't want
11 it. But if you need to give it to me, give it to me. Please
12 give us some time to digest that a little bit and let our
13 stomach settle down and perhaps maybe not right after lunch
14 and then go into the other details that you need to that are
15 more pertinent to what we're really going to be asked to do,
16 and that would be to judge -- or I'm going to be asked to do,
17 and that is to judge whether or not there was this
18 transportation that took place and whether or not they knew
19 about it. Because to me it's -- it's night and day.

20 You're asking me can I be disgusted with someone and
21 still vote them to be innocent? Is that a good --

22 MR. KAROWSKY: Absolutely.

23 PROSPECTIVE JUROR SHERWOOD: -- summation of what you
24 just said?

25 MR. KAROWSKY: That's very well crystalized, yes.

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1 PROSPECTIVE JUROR SHERWOOD: Well, yes. Would I -- I
2 got 90 miles to drive home, I'd probably kick the windows out
3 on the way home, but I -- how else could I do it? If I
4 believed it to be true -- and I'll say it one more time, your
5 job is figuring out whether you want me to trust me to be on
6 the jury. I don't know how else to put this. I've been blunt
7 with you all.

8 MR. KAROWSKY: Well -- no, you've been very blunt, and
9 I appreciate it.

10 So you used a speeding example a little while ago. I
11 mean, you indicated you've got a few speeding tickets in your
12 past?

13 PROSPECTIVE JUROR SHERWOOD: Only one.

14 MR. KAROWSKY: Okay. One. And let's assume that --
15 you know, that -- well, let me ask you this. The people who
16 have been -- who are the abusers of your wife and your
17 stepchildren were not punished apparently.

18 PROSPECTIVE JUROR SHERWOOD: No, they were not.

19 MR. KAROWSKY: Okay. There was no justice done.

20 PROSPECTIVE JUROR SHERWOOD: No, there was not.

21 MR. KAROWSKY: And what we're concerned about is
22 coming in here with that background and we're looking for
23 neutral judges with open minds.

24 PROSPECTIVE JUROR SHERWOOD: It isn't there. There --
25 I am not bringing them here.

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1 Again, the person that abused my wife, I only have a
2 name. I never met the man. He died before I ever came into
3 her life. I know what took place, I know how horrible he was.
4 And -- and let me take it a little bit further.

5 I am of a mindset that believes that -- that there
6 is -- there is change, there is inherent good within a
7 circumstance. Things don't happen by accident. There are
8 reasons that things happen, and they can be found to be good
9 things that happen, and I honestly believe that. And I
10 can't -- I don't -- you know, my wife wouldn't be who she was
11 if that didn't happen. And would that be better or worse? It
12 would be different.

13 Am I making myself clear to you --

14 MR. KAROWSKY: Yes, you are.

15 PROSPECTIVE JUROR SHERWOOD: -- how I see things?

16 MR. KAROWSKY: No, and I appreciate it. I mean, it's
17 very open-minded, and I appreciate that.

18 I guess the question that struck me was this, that
19 those people were not punished, and you sat here and
20 understandably and appropriately said if I could do something
21 about it, I would.

22 PROSPECTIVE JUROR SHERWOOD: If I could stop it, I
23 would.

24 MR. KAROWSKY: Stop it.

25 PROSPECTIVE JUROR SHERWOOD: That's different than if

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1 I could do something about it.

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2 MR. KAROWSKY: Okay. To stop it. And what I'm
3 suggesting is that if you believe that these people are
4 molesters and yet you believe that the government has not
5 proven the technicality of the interstate transportation, will
6 you do something to try and stop them from molesting by voting
7 for guilt when there is no guilt there?

8 PROSPECTIVE JUROR SHERWOOD: We don't want to, like,
9 be prejudging this trial, do we? I mean, how the hell do I
10 know that?

11 THE COURT: But --

12 PROSPECTIVE JUROR SHERWOOD: How the hell do I know
13 what I'm going to vote at the end of this thing when I don't
14 know what you've given me? And I've answered that question.

15 THE COURT: Well, let's say the government hasn't
16 proven the interstate transportation.

17 PROSPECTIVE JUROR SHERWOOD: Then they haven't proven
18 it.

19 THE COURT: And would you be able to find the
20 defendants not guilty or would you do something about
21 preventing them from doing this again by finding them guilty?

22 PROSPECTIVE JUROR SHERWOOD: Well, I said earlier,
23 ain't my job. I would assume that somebody is out there
24 taking care of that job, and I think it's a fair assumption of
25 me to do that. And if I'm wrong, God darn it, the system has

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1 got a big huge hole in it that needs to be fixed really bad.
2 But I'm going to assume that, I have to assume that.

3 Are you going to stand up and tell me that they're

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4 totally -- no problem, the world is a great place, they walk
5 out the door, they got whatever wherever, and that's the end
6 of that, and they're just -- I don't -- you know, you're
7 asking me questions I haven't heard information on, so I can't
8 give you an answer. You know, because I have to be honest
9 with you. I told you in the questionnaire that I bring with
10 me my life, and you have to have that because that's me,
11 that's who I am. It got me where I'm at, and that's what I've
12 become.

13 So, in knowing that, then you have to understand that
14 if I'm asked to judge one thing, as I said earlier, I'll do
15 the best I can to judge it. Will I try to sway the jury
16 because of my bias or my opinion to try to judge them for
17 something other than what he has given here? You know, have
18 you ever been on a trial that maybe that happened? I suspect
19 you probably have. Can it happen? I suspect it probably can.
20 Would it happen here? I don't know, we haven't heard the
21 information yet.

22 MR. KAROWSKY: But you won't --

23 PROSPECTIVE JUROR SHERWOOD: Would I be the one that
24 did it?

25 MR. KAROWSKY: You won't do that.

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1 THE COURT: Wait a minute. Answer that question.
2 Would you be the one that did it?

3 PROSPECTIVE JUROR SHERWOOD: Well, I have answered the
4 question.

5 THE COURT: Okay.

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6 PROSPECTIVE JUROR SHERWOOD: I said can I take this
7 case and judge it based on the merits of the interstate
8 transportation and the knowledge that what was going to happen
9 at the other side of that transportation, and I said yes at
10 least four ways.

11 THE COURT: Okay. Now, you've been questioning this
12 one juror for an hour. Do you want to take a recess now or
13 are you going to finish with him before the recess?

14 MR. KAROWSKY: I've got just one quick question.

15 THE COURT: All right.

16 MR. KAROWSKY: Based on Mr. Locke's questioning and my
17 questioning and our, if you will, pummeling of you a bit which
18 we've been doing for a purpose, but not --

19 PROSPECTIVE JUROR SHERWOOD: I hope they have a medic
20 here is what I'm hoping.

21 MR. KAROWSKY: Me too, me too. Can you be fair and
22 impartial to us now?

23 PROSPECTIVE JUROR SHERWOOD: I hope you don't take
24 this the wrong way, but you're absolutely irrelevant to me.

25 MR. KAROWSKY: Thank you.

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1 PROSPECTIVE JUROR SHERWOOD: You're totally irrelevant
2 to me.

3 MR. KAROWSKY: That's a perfect answer. Thank you,
4 sir.

5 THE COURT: All right. Ms. Marks, do you have any
6 questions?

7 MS. MARKS: No.

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8 THE COURT: All right. We're going to take a
9 15-minute recess now.
10 Mr. Sherwood, if you'll step outside --
11 MS. WHITE: Your Honor, I've not had a chance to talk
12 to --
13 THE COURT: I don't care. We need a recess. The
14 Court Reporter has been going for -- all right.
15 MS. WHITE: No, that's fine. We can come back after
16 the recess, that's fine.
17 THE COURT: If you'll step outside, go into the room
18 that the court security officer will tell you, we're going to
19 take a little break, and then when we come back we may have
20 some more questions for you, but we'll tell you then whether
21 you're going to come back.
22 PROSPECTIVE JUROR SHERWOOD: Okay.
23 THE COURT: All right.
24 (Prospective Juror Sherwood departed courtroom.)
25 THE COURT: All right. Mr. Sherwood is outside the

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1 courtroom.
2 I don't know what questions you want to ask. If you
3 want to ask him about another subject, I suppose that's fine.
4 I came out here with the mindset that I was going to resolve
5 any doubt about whether to keep these jurors in favor of the
6 defendants in light of my previous concern, which is a
7 continuing concern that I have, about whether anybody can put
8 their emotions aside and reach a decision on some of the
9 technical elements of this case in light of the evidence that

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10 they're going to hear.

11 But I have to tell you, as I've listened to this
12 examination of Mr. Sherwood, he is a good juror, and I am not
13 going to excuse him for cause in this matter. As a matter of
14 fact, when he keeps repeating the fact that he's desensitized,
15 that makes him a better juror in my view by reason of his
16 previous experience than if he had not had the previous
17 experience.

18 He has said every which way that can be imagined in
19 some blunt terms, in some subtle terms, some direct terms and
20 some indirect terms that he is not going to let his emotions
21 or his wife's experiences or his experiences affect his
22 deliberations in this matter. He's not an educated man. He
23 hasn't been told about the law yet. He may have said some
24 things that to some judge on the Court of Appeals that's never
25 tried a case might sound like he can't follow the law and that

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1 he cannot accord the presumption of innocence or that he's
2 going to give more weight to the testimony of a law
3 enforcement officer than he would to any other witness, but he
4 hasn't heard the Court's instructions yet and I don't care,
5 he's staying on this panel.

6 So if you want to ask him some more questions, ask him
7 some more questions, but he's staying on this panel as far as
8 I'm concerned.

9 (Recess taken.)

10 THE COURT: All right. I made the comments that I did
11 before we took the recess so that the government could make a

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12 determination as to whether you wanted to ask questions or not
13 in light of the Court's inclination. I am concerned that
14 you've spent so far an hour on Mr. Sherwood and we have 18
15 other jurors that we need to address today.

16 Ms. White.

17 MS. WHITE: Your Honor, I agree, I'm concerned with
18 the time as well. I was -- there was only one question I was
19 going to ask which had nothing to do with what Mr. Locke and
20 Mr. Karowsky were asking, and I think they covered that area
21 several times well.

22 I asked -- Ms. Endrizzi and I conferred about my
23 question over the recess, she clarified it for me. I have no
24 need to ask this juror any questions.

25 THE COURT: All right. I want to just elaborate a

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1 little bit further on something I alluded to, and that is the
2 question whether the juror would give more weight to the
3 testimony of a law enforcement officer than he would to other
4 witnesses simply because it is a law enforcement officer.

5 I'm aware of the case law which requires that a judge
6 ask that question if it is requested. I am not aware of any
7 authority that says that the judge is required to excuse the
8 juror for cause if the juror answers that question in the
9 affirmative. If any of you are aware of such a case, I would
10 like to see it. Otherwise, it is my view that that is
11 something that can be covered by the Court's instructions.

12 Another judge that I respect highly told me that when
13 he went to state court and was asked that question by the

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14 judge he said, yes, that he would give more weight to the
15 testimony of a law enforcement officer.
16 Beyond that, I know of nothing improper by considering
17 a witness's occupation and giving that witness more
18 credibility than you might otherwise give the witness because
19 of his occupation. Police officers are only one occupation
20 that might accord a witness some greater credibility. One
21 might think that being a judge could accord a witness more
22 credibility or being a minister or being a firefighter or any
23 of those other occupations that people should respect, and so
24 I don't excuse jurors simply because they answer that question
25 in the affirmative.

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1 Sometimes I explain to them when I ask the question
2 rather than when it comes on a questionnaire that they need to
3 consider everything about a witness in determining his
4 credibility, not just his occupation, and I ask them if they
5 would always believe a police officer, and I get some further
6 answers. But I think it was this witness who mentioned -- did
7 he mention O. J. Simpson?

8 MS. WHITE: Yes.

9 THE COURT: See, when he mentioned that, when he
10 mentioned that case, that showed me that he's not going to
11 believe every law enforcement officer because that was an
12 example where a law enforcement officer lied and everybody
13 knew he lied. And so I'm not excusing him because of any of
14 his answers to that question.

15 All right. So I'm going to bring him back in, then.

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16 Is there a challenge for cause?

17 MR. LOCKE: Yes, Your Honor, I would -- I would
18 challenge him but just for the record.

19 THE COURT: All right. I want to make sure before I
20 went to all the trouble of denying it that you really were
21 making the challenge. So for the reasons the Court has
22 stated, that challenge for cause is denied.

23 MS. WHITE: Your Honor, just one thing.

24 With respect to the issue of the weight given law
25 enforcement --

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1 THE COURT: Just a minute. I think that Mr. Sherwood
2 just came in.

3 (Prospective Juror Sherwood entered courtroom.)

4 MS. WHITE: I'll save that.

5 THE COURT: We can take that later.

6 MS. WHITE: That's fine.

7 THE COURT: Mr. Sherwood, thank you for coming back.
8 I'm going to order you to come back here in this court at 9:00
9 a.m. on January the 15th for further proceedings. The Clerk
10 is going to give you a card with her telephone number on it.
11 If anything comes up in the meantime, that's the number you
12 can call to reach her. She would like to have a number where
13 she can reach you in the meantime.

14 And I am instructing you that between now and the time
15 that you come back to court, do not discuss this case or any
16 issues that you think may be involved in this case with
17 anyone; and do not seek or obtain any information about the

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18 case.

19 All right. If you'll give her your phone number then,
20 you will be excused, and we'll see you back here on January
21 the 15th at 9:00 a.m.

22 And that's probably the most personal involvement
23 you'll have in this whole trial until you finally get to the
24 point of deliberation if you're selected as a juror.

25 PROSPECTIVE JUROR SHERWOOD: I hope so.

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1 THE COURT: Thank you.

2 (Prospective Juror Sherwood departed courtroom.)

3 THE CLERK: Ready for the next one?

4 THE COURT: Yes, please bring in Mr. Green.

5 But, wait a minute, before she brings in Mr. Green,
6 were you going to say anything?

7 MS. WHITE: Just for the record, Your Honor, as to the
8 issue given the level of weight that Mr. Sherwood indicated --

9 THE COURT: Just a minute, yeah.

10 MS. WHITE: -- that he would give to law enforcement
11 officers, he answered it both ways. He said he would give --
12 tend to give greater weight, and he also said he would tend to
13 give less weight to the testimony of a law enforcement
14 officer. Those would be questions 27 and 28. I take that to
15 mean that it depends upon the witness, so he answered it both
16 ways.

17 THE COURT: Well, as I say, for your future
18 edification, if you are concerned about any other jurors'
19 answers to that question, I would urge you to ask a follow-up

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20 question so that we can determine what the witness is
21 really -- or what the juror is really saying.

22 MS. WHITE: Thank you.

23 THE COURT: All right. Bring in Mr. Green.

24 (Prospective Juror Green entered courtroom.)

25 THE COURT: Mr. Green, thank you for waiting. The

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1 lawyers are going to ask you some questions now, and we're
2 going to begin with the attorney for the government, Ms.
3 Endrizzi.

4 MS. ENDRIZZI: Good morning.

5 PROSPECTIVE JUROR GREEN: Good morning.

6 MS. ENDRIZZI: You'll find that trial is a lot of
7 hurry up and wait. So --

8 THE COURT: No, just this process. After we get
9 going, trial will not be hurry up and wait.

10 MS. ENDRIZZI: It will be rocket speed.

11 What's your relationship to Nathaniel and Benjamin
12 Green?

13 PROSPECTIVE JUROR GREEN: They're my older brothers.

14 MS. ENDRIZZI: Okay. And would the fact that they are
15 Sacramento County deputies influence you in evaluating other
16 witnesses in this case?

17 PROSPECTIVE JUROR GREEN: I don't believe it would.

18 MS. ENDRIZZI: Okay. You don't believe or no --

19 PROSPECTIVE JUROR GREEN: No, it would not.

20 MS. ENDRIZZI: Okay. I had a question about what you
21 had written when you said you graduated from high school with

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22 CHSPE.

23 PROSPECTIVE JUROR GREEN: The California high school
24 proficiency exam.

25 MS. ENDRIZZI: Okay. I'm not from California.

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1 PROSPECTIVE JUROR GREEN: Oh.

2 MS. ENDRIZZI: You're also taking classes now. What
3 are you studying?

4 PROSPECTIVE JUROR GREEN: I'm not taking any classes
5 right now.

6 MS. ENDRIZZI: Oh, you're not. Okay. So you're
7 working two jobs, correct?

8 PROSPECTIVE JUROR GREEN: Correct.

9 MS. ENDRIZZI: And that's at Washington Mutual and the
10 Old Spaghetti Factory?

11 PROSPECTIVE JUROR GREEN: Correct.

12 MS. ENDRIZZI: Okay. Now, you're going to hear, and
13 you got a little bit of this through the questionnaire, that
14 the topic is child molestation.

15 PROSPECTIVE JUROR GREEN: Right.

16 MS. ENDRIZZI: It's gross, can be graphic. But what
17 I'm going to ask you is whether or not all that aside, because
18 you'll have to listen to it with 11 other people in the box,
19 can you apply the facts of the case to the law as the judge
20 gives it to you so that if we only prove -- and we're the ones
21 who carry the burden of proof. If we have to prove four
22 things and we only prove three, can you acquit that defendant
23 because we did not prove the fourth element?

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24 And acquit -- I shouldn't use so many legal terms.
25 Can you find that defendant not guilty? We have the

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1 burden of proving all four elements. If we only prove three,
2 even though those graphic images and what you hear is
3 horrible, can you still find that person not guilty if we
4 don't prove all the elements?

5 PROSPECTIVE JUROR GREEN: Yes.

6 MS. ENDRIZZI: Okay. Can you promise me that if
7 you're selected for this jury that you're going to wait and
8 hear all the facts from all the witnesses before you make a
9 decision about whether these defendants are guilty or
10 innocent?

11 PROSPECTIVE JUROR GREEN: Yes.

12 MS. ENDRIZZI: Okay. That's all we need to know.

13 Thanks.

14 THE COURT: Mr. Locke has some questions now.

15 MR. LOCKE: Mr. Green, good morning.

16 PROSPECTIVE JUROR GREEN: Good morning

17 MR. LOCKE: My name is Bruce Locke, and I'm one of the
18 defense attorneys in the case.

19 You understand -- Ms. Endrizzi alluded to the fact that
20 some of the testimony in this case is going to be graphic.

21 PROSPECTIVE JUROR GREEN: Uh-huh.

22 MR. LOCKE: You understand that?

23 PROSPECTIVE JUROR GREEN: Yes.

24 MR. LOCKE: You understand from what we have been
25 talking about that this case involves molestation of children

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1 as young as seven years old.

2 PROSPECTIVE JUROR GREEN: Yes.

3 MR. LOCKE: Okay. And that it involves oral sex, anal
4 sex, vaginal sex with minors. You understand that?

5 PROSPECTIVE JUROR GREEN: Yes.

6 MR. LOCKE: Okay. What is the first word that comes
7 to your mind when you -- when I say oral sex with a
8 7-year-old?

9 PROSPECTIVE JUROR GREEN: Wrong.

10 MR. LOCKE: Okay. On a scale of one to ten with one
11 being the least serious and ten being the most serious crime,
12 where would you put child molestation?

13 PROSPECTIVE JUROR GREEN: I'm not -- I'm not sure.
14 I -- eight.

15 MR. LOCKE: Okay. If this case came down to this
16 situation, where the government has the burden of proving
17 beyond a reasonable doubt that the defendant -- let's just
18 treat it as if there's only one defendant -- that the
19 defendant transported or aided in the transportation of a
20 child across state lines with the intent that the child engage
21 in unlawful sex, which would be sex with an adult when they're
22 still under eighteen -- okay. So the government has to prove
23 that at the time that the child crossed state lines that the
24 intent was that the child have sex in the other state. You
25 understand that?

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1 PROSPECTIVE JUROR GREEN: Right.

2 MR. LOCKE: All right. Now, if in this case it was
3 clear to you that one of the defendants had sex with that
4 child who was 14 years old, say, and the sex was oral sex,
5 anal sex, vaginal sex, but there was no evidence, none, that
6 the defendant intended that at the time that the child crossed
7 state lines -- you understand?

8 PROSPECTIVE JUROR GREEN: Uh-huh.

9 MR. LOCKE: Then, in that situation where you knew
10 that the molestation had occurred, would you still be able to
11 vote to acquit the defendant?

12 PROSPECTIVE JUROR GREEN: On basis of intent?

13 MR. LOCKE: Yeah.

14 PROSPECTIVE JUROR GREEN: From what you've told me, I
15 believe I would, yes.

16 MR. LOCKE: Okay. You wouldn't be affected by the
17 fact that you knew that the molestation occurred? You
18 wouldn't be inclined to find -- find them guilty even though
19 there was no evidence on that other issue?

20 PROSPECTIVE JUROR GREEN: Without proof of intent, no.
21 No, I wouldn't.

22 MR. LOCKE: Okay. It would be pretty clear that the
23 defendant intended to have -- at the time that the child --
24 you know, when he's having sex with the child that that was
25 the intent at that time.

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1 PROSPECTIVE JUROR GREEN: Right.
2 MR. LOCKE: But there would be no evidence that the
3 intent existed, say, three weeks before that.
4 PROSPECTIVE JUROR GREEN: Right.
5 MR. LOCKE: And you'd vote to acquit?
6 PROSPECTIVE JUROR GREEN: Right.
7 MR. LOCKE: You don't have any problem telling me that
8 you'd do that?
9 PROSPECTIVE JUROR GREEN: No.
10 MR. LOCKE: You can promise me that that's -- if
11 that's the way the facts came down, that's what you'd do?
12 PROSPECTIVE JUROR GREEN: Yes.
13 MR. LOCKE: Okay. There's going to be a lot of
14 publicity or there may be a lot of publicity about this case.
15 You understand that?
16 PROSPECTIVE JUROR GREEN: Yes.
17 MR. LOCKE: All right. And you have two brothers who
18 are sheriff's deputies here in Sacramento County?
19 PROSPECTIVE JUROR GREEN: Correct.
20 MR. LOCKE: All right. Would you be -- have a problem
21 voting to find them not -- the defendant not guilty in the
22 situation I gave you because you have to face your brothers?
23 PROSPECTIVE JUROR GREEN: No.
24 MR. LOCKE: Okay. Would your brothers understand?
25 PROSPECTIVE JUROR GREEN: I believe they would. My

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1 relationship with the older brother is -- it's not strained,

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2 but we don't see each other much just because we live separate
3 lives, so that probably wouldn't even come up. With my
4 younger brother it's a much better relationship we have, a
5 much more back and forth.

6 MR. LOCKE: Okay. But, you know, your family, your
7 friends, your co-workers, they're going to know you're on a
8 jury and eventually at some point in time they're going to
9 know you're on this jury.

10 PROSPECTIVE JUROR GREEN: Right.

11 MR. LOCKE: And you're saying that that wouldn't
12 affect what you'd do in the jury box. You wouldn't be
13 thinking about, oh, I'm going to have to explain this to
14 somebody?

15 PROSPECTIVE JUROR GREEN: No.

16 MR. LOCKE: I have no further questions, Your Honor.

17 THE COURT: Ms. Marks, any questions?

18 MS. MARKS: Mr. Karowsky.

19 THE COURT: Mr. Karowsky.

20 MR. KAROWSKY: Just a couple very brief ones, Your
21 Honor.

22 I notice that you're working a full-time job and a
23 part-time job, correct?

24 PROSPECTIVE JUROR GREEN: That's correct.

25 MR. KAROWSKY: All right. And yet you checked that

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1 you had no problem -- there are no exceptional personal issues
2 in terms of devoting your time to this trial, correct?

3 PROSPECTIVE JUROR GREEN: Correct.

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4 MR. KAROWSKY: All right. Do you understand that if
5 selected this case could take six to eight weeks and you're
6 going to be sitting here for that period of time not working
7 at least the full-time job?

8 PROSPECTIVE JUROR GREEN: Correct.

9 MR. KAROWSKY: Is that going to be a -- pose an
10 economic problem?

11 PROSPECTIVE JUROR GREEN: No, they would pay me
12 actually while I was working on a jury.

13 MR. KAROWSKY: Okay. Good. Thank you.

14 Is there any reason that you can think of that you
15 could not be a fair and impartial juror in this case?

16 PROSPECTIVE JUROR GREEN: No.

17 MR. KAROWSKY: Okay. Thank you.

18 THE COURT: All right. Does the government -- oh,
19 you're finished.

20 MS. ENDRIZZI: Nothing further, Your Honor.

21 THE COURT: All right. Then if you'll step outside,
22 Mr. Green, I'll be asking you to come back here in just a
23 minute, and we'll tell you whether you come back on January
24 the 15th or not.

25 PROSPECTIVE JUROR GREEN: Okay.

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1 (Prospective Juror Green departed courtroom.)

2 THE COURT: Is there any challenge for cause?

3 MS. ENDRIZZI: No, Your Honor.

4 MR. LOCKE: No, Your Honor.

5 MS. MARKS: No, Your Honor.

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6 THE COURT: All right. She can bring him right back
7 in. You can have him come in now.
8 (Prospective Juror Green entered courtroom.)
9 THE COURT: Mr. Green, you can just stand right there.
10 I'm ordering you to come back here in this court on January
11 the 15th at 9:00 a.m. for further proceedings. In the
12 meantime, I'm instructing you not to discuss this case with
13 anyone and not to seek or receive any information about the
14 case or anything that you might think is an issue in the case.
15 The Clerk is going to give you a card with her
16 telephone number on it, so if there's any reason that you need
17 to call her, you may call her at that number. And she would
18 like to have a phone number where she can reach you in case we
19 need to between now and January the 15th.
20 All right. You're excused now. You're ordered back
21 on January the 15th at 9:00 a.m.
22 PROSPECTIVE JUROR GREEN: Okay.
23 THE COURT: Thank you.
24 (Prospective Juror Green departed courtroom.)
25 THE COURT: Before you bring in the next juror I just

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1 want to raise a point.
2 Is oral, anal and vaginal sex as graphic as it gets or
3 is there more? And the reason I ask is that I wasn't
4 concerned so much about Mr. Sherwood because of his so-called
5 what he referred to as desensitization. But if we get
6 somebody who appears to be fragile, is there any more you can
7 tell them about the details of this to see if it's going to

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8 revolt them so much that they can't focus on the issues in the
9 case?

10 MS. MARKS: I'd like to address that briefly, Your
11 Honor --

12 THE COURT: All right.

13 MS. MARKS: -- because it's been on my mind all
14 morning also.

15 The problem from Mr. LaBrecque's point of view is that
16 there is more, but it's subject to motions in limine that are
17 currently -- that aren't pending before the Court, but that
18 the Court decided, with our okay, I'll front that, that it
19 would be better to wait until we were in the process of the
20 trial to rule on those motions.

21 THE COURT: Can you ask it hypothetically? For
22 example -- there's a way to ask it that I started to approach
23 and then I backed down a little bit because I didn't want to
24 take your thunder away from you. But when somebody looks a
25 little doubtful say, well, suppose it gets worse,

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1 suppose just, for example, and you give one of these things,
2 what about if something like that came out?

3 MS. MARKS: Yeah, there is more, and I've been
4 thinking that it -- I was going to bring it up to my
5 co-counsel at the lunch hour, but now that you've brought it
6 up, I'll make sure to do that.

7 THE COURT: I think there's a way you can deal with
8 it. Because I don't want to get somebody in here that says
9 later on, gee, you know, when you just told me it was

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10 intercourse, I wasn't so concerned, but now that I hear about
11 this other stuff I'm getting physically sick.

12 MS. MARKS: I'm with you completely. I understand.
13 And if I could have a moment, maybe I could just have a moment
14 with them now.

15 THE COURT: Okay. We'll take a minute before we bring
16 in the next juror.

17 (Off the record.)

18 MS. MARKS: Thank you.

19 THE COURT: All right. Bring in the next juror.

20 (Prospective Juror Caddel entered courtroom.)

21 THE COURT: You're Ms. Caddel?

22 PROSPECTIVE JUROR CADDEL: Yes.

23 THE COURT: Have a seat there, Ms. Caddel. The
24 lawyers are going to ask you some questions. We're going to
25 begin with Mr. Locke.

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1 MR. LOCKE: Thank you, Your Honor.

2 Ms. Caddel. Caddel, is it?

3 PROSPECTIVE JUROR CADDEL: Caddel, yes.

4 MR. LOCKE: Okay. My name is Bruce Locke, and I'm one
5 of the defense attorneys in the case.

6 PROSPECTIVE JUROR CADDEL: Okay.

7 MR. LOCKE: And I have a few questions for you based
8 upon your answers to your questionnaire.

9 PROSPECTIVE JUROR CADDEL: Uh-huh.

10 MR. LOCKE: And these -- this topic is uncomfortable
11 for me, and I think it would be uncomfortable for you. And I

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12 want to assure you that, you know, if we met outside this
13 courtroom, we wouldn't be having this discussion or anything
14 like it. But because you might end up being one of the jurors
15 who judge the facts in this case, it's important that -- that
16 I and my other defense counsel know how you would react to
17 things because you could end up being a very important person
18 in this case. And so I would appreciate you just letting me
19 have the truth, the whole truth about what you feel about what
20 I'm going to ask you about.

21 All right?

22 PROSPECTIVE JUROR CADDEL: Okay.

23 MR. LOCKE: It's not meant to embarrass you at all or
24 make you feel uncomfortable, it's just something that we have
25 to do. Okay?

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1 You know what the -- generally what this case is
2 about, is that --

3 PROSPECTIVE JUROR CADDEL: Generally, yes.

4 MR. LOCKE: Okay. And in your answers on the
5 questionnaire, you said that hearing about these charges
6 sickened you.

7 PROSPECTIVE JUROR CADDEL: Yeah.

8 MR. LOCKE: And so just hearing that it involved oral
9 sex and anal sex and vaginal sex with minors, that was enough
10 to sicken you; is that right?

11 PROSPECTIVE JUROR CADDEL: I know -- may I say I know
12 generally about the case, but, you know what, I remember some
13 things on the news that I heard. And what sickens me is

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14 that -- I'm not saying the defendants in particular, what
15 sickens me is that these things happen to children. It's --

16 MR. LOCKE: Right. And --

17 PROSPECTIVE JUROR CADDEL: It's just -- you know, it
18 sickens me. I think it's inappropriate and destroys lives.

19 THE COURT: What do you remember hearing on the news?

20 PROSPECTIVE JUROR CADDEL: Well, I remember charges of
21 child abuse, sexual child abuse. I remember -- you know, I
22 might remember that there was a conviction somewhere, but --
23 and I remember I believe one of the daughters of a woman who
24 is grown up. I don't remember specifics, but I do remember
25 because it's -- you know, it's coming back.

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1 THE COURT: Uh-huh. What makes you think it was this
2 case rather than another case?

3 PROSPECTIVE JUROR CADDEL: I don't. I remember
4 something.

5 THE COURT: All right. Do you remember any names or
6 anything that would --

7 PROSPECTIVE JUROR CADDEL: No, absolutely not.

8 THE COURT: Do you remember any descriptions of the
9 people involved?

10 PROSPECTIVE JUROR CADDEL: No.

11 THE COURT: So --

12 PROSPECTIVE JUROR CADDEL: But I do remember a case in
13 Sacramento. So, you know --

14 THE COURT: How long ago?

15 PROSPECTIVE JUROR CADDEL: Last year, I believe.

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16 Maybe sometime this year she was on the news. I --
17 THE COURT: Last year would be yesterday.
18 PROSPECTIVE JUROR CADDEL: Oh, gee. Wow, okay. Last
19 year.
20 THE COURT: Day before yesterday.
21 PROSPECTIVE JUROR CADDEL: That's right, last year,
22 you got me there.
23 THE COURT: So you think it was sometime within the
24 last two years.
25 PROSPECTIVE JUROR CADDEL: Yes. Oh, definitely it was

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1 last year, and I remember catching a glimpse of it. So I
2 don't know it's this case, no, I don't.
3 THE COURT: Okay.
4 MR. LOCKE: Okay. But the point you were making when
5 you wrote down sickened was that you have a physical reaction
6 to hearing about child abuse cases in general?
7 PROSPECTIVE JUROR CADDEL: No, not a physical
8 sickening. Like, it's just -- no, it's just upsetting to me.
9 It just makes me upset that those things happen.
10 MR. LOCKE: Right. I didn't mean that you actually
11 got sick, but you just feel bad when you hear that. Is
12 that -- would that be correct?
13 PROSPECTIVE JUROR CADDEL: Well, yes.
14 MR. LOCKE: Okay.
15 PROSPECTIVE JUROR CADDEL: Most definitely.
16 MR. LOCKE: And that's a normal reaction.
17 Now, there's going -- this case is going to have

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18 publicity, there's going to be articles about it in the paper.
19 And people that you know, family and friends are going to know
20 that you were on a jury and at some point in time they're
21 going to know, if you're selected, that you were on this jury.
22 And if a case -- if the facts in this case came down
23 that there was no doubt in your mind but that child
24 molestation occurred, in other words, an adult did have
25 sex, oral sex, anal sex and vaginal sex with children as young

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1 as seven years old, would you -- could you imagine yourself
2 ever voting to acquit those people?
3 PROSPECTIVE JUROR CADDEL: Let me -- let me say what I
4 think you're asking me or asking me. If the evidence and the
5 facts point to that all this occurred, would I have trouble
6 acquitting them?
7 MR. LOCKE: Could you ever?
8 PROSPECTIVE JUROR CADDEL: And they all occurred?
9 MR. LOCKE: Yeah.
10 THE COURT: Well --
11 PROSPECTIVE JUROR CADDEL: No.
12 MR. LOCKE: Okay.
13 PROSPECTIVE JUROR CADDEL: I hear him saying just the
14 facts and --
15 MR. LOCKE: Let me add -- let me add one thing to
16 this. Okay?
17 If the judge instructs you at the end of the case --
18 assume that it's clear to you that the molestation occurred,
19 but the judge instructs you at the end of the case that in

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20 order to find the defendants guilty, you have to find -- the
21 government has to prove beyond a reasonable doubt that --
22 let's take one defendant -- that a defendant transported the
23 child across state lines with the intent that the child engage
24 in sex, illegal sex, that's sex with -- a minor having sex
25 with an adult, and there was no evidence introduced by the

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1 government that the defendant intended that to happen at the
2 time that the child was transported across state lines, okay,
3 would you then in that situation -- do you understand the
4 situation I'm talking about?

5 PROSPECTIVE JUROR CADDEL: Here's what I think you're
6 saying. May I repeat it?

7 MR. LOCKE: Sure, please.

8 PROSPECTIVE JUROR CADDEL: I think you're saying the
9 facts show that there was child molestation from, you know,
10 the --

11 MR. LOCKE: From a defendant, let's make it one
12 defendant.

13 PROSPECTIVE JUROR CADDEL: A defendant, okay. And
14 there was transfer of children for this purpose, but there was
15 nothing written down or plotted out to prove that -- that this
16 happened?

17 THE COURT: No.

18 MR. LOCKE: No.

19 THE COURT: Let me make it simpler.

20 PROSPECTIVE JUROR CADDEL: Thank you. I'm getting
21 confused.

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22 THE COURT: Suppose there are four elements of the
23 crime that the government has to prove.

24 PROSPECTIVE JUROR CADDEL: Uh-huh.

25 THE COURT: One of the elements is the molestation.

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1 PROSPECTIVE JUROR CADDEL: Uh-huh.

2 THE COURT: But another one of the elements is that at
3 the time the defendant transported the child from one state to
4 another, the defendant intended that the child engage in
5 illegal sex activity. And what Mr. Locke wants to know is,
6 even though the government has shown the first element, i.e.
7 the molestation, by clear, graphic, disgusting evidence, would
8 you be able to find the defendant not guilty if the government
9 didn't prove the last element?

10 PROSPECTIVE JUROR CADDEL: No, I would find him
11 guilty.

12 MR. LOCKE: Okay. Thank you. That's all the
13 questions that I have, Your Honor.

14 THE COURT: I'm going to ask you to explain that, what
15 you mean.

16 PROSPECTIVE JUROR CADDEL: Okay. I'm going to explain
17 what I think you said.

18 That there is clear evidence that one of the
19 defendants in this courtroom had molested the children, and --

20 THE COURT: It's clear, it's graphic, it's undisputed.

21 PROSPECTIVE JUROR CADDEL: It's done, it's undisputed.
22 But then there's this transportation of four children across a
23 border somewhere, a state for the intent of sexual abuse by

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24 somebody else, but there isn't any proof to show this?

25 THE COURT: No proof.

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1 PROSPECTIVE JUROR CADDEL: Could I acquit him?

2 THE COURT: Right.

3 PROSPECTIVE JUROR CADDEL: No.

4 THE COURT: All right. Any other questions?

5 MR. LOCKE: Thank you very much. I appreciate your
6 being very honest.

7 PROSPECTIVE JUROR CADDEL: That's the way I see it,
8 sorry.

9 MR. LOCKE: No, it's --

10 THE COURT: No, that's why we're here, and that's why
11 we're questioning people individually.

12 PROSPECTIVE JUROR CADDEL: Okay. Good.

13 THE COURT: Because there's no right or wrong answer.
14 We need to know what you think inside.

15 PROSPECTIVE JUROR CADDEL: That's in my heart. That's
16 what I would do, that's what I would do.

17 THE COURT: Ms. White.

18 MS. WHITE: Just for clarification, to you acquit
19 means you would have to find that you would not be able to
20 find them not guilty under that situation?

21 PROSPECTIVE JUROR CADDEL: That's right. I would --

22 THE COURT: No, you put a double negative in there.
23 Acquit means that you can't find them guilty.

24 MS. WHITE: Guilty, correct. I'm sorry. Thank you.
25 You wouldn't be able to find them guilty.

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1 PROSPECTIVE JUROR CADDEL: No.

2 MS. WHITE: Okay. I just want to clarify. I
3 appreciate that.

4 PROSPECTIVE JUROR CADDEL: I could not say they are
5 not guilty. I would say he's guilty, they're guilty, whoever.
6 If there is this direct fact that this molestation occurred,
7 there's no question, and now there's this intent to transport
8 them over to another state for the same purpose but there's no
9 physical -- there's no, I don't know, papers --

10 THE COURT: There's no evidence at all, that's the
11 hypothetical question.

12 PROSPECTIVE JUROR CADDEL: Yeah, the deal is, they're
13 guilty.

14 MS. WHITE: Okay. Well, let me -- can I just clarify
15 one thing?

16 What we're talking about is we have one defendant
17 that's been charged with a crime, we're just talking about one
18 crime, transporting a minor across a state line for purposes
19 of unlawful sex. There may be four elements to that offense.
20 And the judge is going to instruct you as to the law that you
21 need to apply to the facts in this case, and he's going to
22 tell you, I think, something along the following lines, that
23 you need to find that all four of those elements were proven
24 by the government beyond a reasonable doubt. And one of those
25 elements is that the defendant facing the charge had to have

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1 formed the intent to have that child engage in unlawful sexual
2 conduct before the transportation.

3 Now, if you found -- that's one of the elements. Now,
4 if the government proved all the remaining elements but not
5 that element, and the Court instructs you you have to find all
6 four elements before you can find the defendant guilty, would
7 you be able to follow the law and find the defendant not
8 guilty?

9 PROSPECTIVE JUROR CADDEL: No.

10 MS. WHITE: Okay. That's all I wanted to know.

11 PROSPECTIVE JUROR CADDEL: I would find him guilty.

12 MS. WHITE: Thank you.

13 THE COURT: All right. Thank you. If you'll step
14 outside there, Ms. Caddel, we'll get back to you in just a
15 moment and we'll tell you whether you're coming back on
16 January the 15th or not. Yeah, out the back door. And we'll
17 be back with you in just a minute or so.

18 PROSPECTIVE JUROR CADDEL: Okay.

19 (Prospective Juror Caddel departed courtroom.)

20 THE COURT: All right. Ms. Caddel is outside the
21 courtroom. I don't think it will take any more than half a
22 minute. Any objection to challenging her for -- excusing her
23 for cause?

24 MS. MARKS: No.

25 MS. WHITE: No objection, Your Honor.

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1 THE COURT: All right. Bring her back in. That's
2 what we wanted to find out.

3 (Prospective Juror Caddel entered courtroom.)

4 THE COURT: Ms. Caddel, you can stand right there. It
5 will not be necessary for you to come back on the 15th.
6 You're excused. Thank you very much for coming. I'll ask
7 only that you not discuss the questions that were asked to you
8 or your answers to those questions with any of other
9 prospective jurors in case you may see them.

10 PROSPECTIVE JUROR CADDEL: Okay.

11 THE COURT: Thank you for coming.

12 PROSPECTIVE JUROR CADDEL: Thank you.

13 THE COURT: All right. Let's bring the next juror in.
14 (Prospective Juror Caddel departed courtroom.)

15 THE COURT: Before you bring the next juror in, you
16 could kind of see that coming because she had been equivocal
17 on both the questions as to whether she could follow the
18 Court's instructions. And if we had gotten past the question
19 that Mr. Locke had asked, I was going to have to myself ask
20 her what she meant when she said she would try to answer the
21 Court's questions -- try to follow the Court's instructions
22 but she wasn't sure.

23 (Prospective Juror Nava entered courtroom.)

24 THE COURT: Mr. Nava. Have a seat there, Mr. Nava.
25 The lawyers are going to ask you some questions now, and we're

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1 going to begin with the lawyer for the government Ms.
2 Endri zzi .

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3 PROSPECTIVE JUROR NAVA: Okay.

4 MS. ENDRIZZI: Good morning.

5 PROSPECTIVE JUROR NAVA: Good morning.

6 MS. ENDRIZZI: Earlier you let the Court know that you
7 went to the police academy.

8 PROSPECTIVE JUROR NAVA: Uh-huh.

9 MS. ENDRIZZI: What changed your mind about pursuing a
10 career in law enforcement?

11 PROSPECTIVE JUROR NAVA: Well, I was -- I was a step
12 away from starting my career in law enforcement when I had
13 contact with somebody at the current company that I work with,
14 and they needed somebody bilingual to work. And since I
15 wasn't hired, I started working there and I started liking it,
16 and I started looking at everything and I thought, you know,
17 this is not too bad so I think I'll stick with this for a
18 while.

19 MS. ENDRIZZI: So the police academy, they were a day
20 late?

21 PROSPECTIVE JUROR NAVA: Yeah.

22 MS. ENDRIZZI: Okay. You mentioned that you had some
23 firearm charges brought against you a long time ago.

24 PROSPECTIVE JUROR NAVA: Uh-huh.

25 MS. ENDRIZZI: Were those charges dropped?

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1 PROSPECTIVE JUROR NAVA: Yes.

2 MS. ENDRIZZI: Now, given that you've been through the
3 police academy and that you mentioned in the questionnaire
4 that you might tend to give greater weight to the testimony of

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5 a law enforcement officer just because he's a law enforcement
6 officer, if the judge instructed you that you have to consider
7 everything about all the witnesses when evaluating their
8 testimony --

9 PROSPECTIVE JUROR NAVA: Uh-huh.

10 MS. ENDRIZZI: -- could you still do that when the --
11 rather than just relying on somebody's occupation as a measure
12 of weight? If you could look at all -- everything that you
13 knew about that witness and how they acted, what they said,
14 how they said it in evaluating that witness's testimony.

15 PROSPECTIVE JUROR NAVA: Uh-huh. I think so.

16 MS. ENDRIZZI: Okay. Could you or couldn't you? I'm
17 going to ask you to say yes or no.

18 PROSPECTIVE JUROR NAVA: Yes.

19 MS. ENDRIZZI: Okay. Now, question 51 said some --
20 asked, Is there anything about the nature of the allegations
21 in this case that would affect your ability to be fair and
22 impartial?

23 You got a little bit of a preview of what this case is
24 about --

25 PROSPECTIVE JUROR NAVA: Uh-huh.

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1 MS. ENDRIZZI: -- child molestation, anal sex, oral
2 sex, vaginal sex, drinking ejaculate. I mean, it's going to
3 be horrible to hear.

4 PROSPECTIVE JUROR NAVA: Uh-huh.

5 MS. ENDRIZZI: And you answered, I love children,
6 that's why I volunteer on organizations that work with

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7 children and have since I was 17 years old. I don't believe I
8 could be impartial due to children being hurt.

9 PROSPECTIVE JUROR NAVA: Uh-huh.

10 MS. ENDRIZZI: Everyone in this room thinks child
11 molestation is awful. I would --

12 PROSPECTIVE JUROR NAVA: Uh-huh.

13 MS. ENDRIZZI: And that's a natural feeling.

14 PROSPECTIVE JUROR NAVA: Yes.

15 MS. ENDRIZZI: But what you're brought here to do as a
16 juror is to apply the facts of the case to the law that the
17 judge gives you.

18 PROSPECTIVE JUROR NAVA: Uh-huh.

19 MS. ENDRIZZI: And regardless of how gross it is and
20 the fact that children were hurt --

21 PROSPECTIVE JUROR NAVA: Yes.

22 MS. ENDRIZZI: -- could you -- what I'd -- the thing
23 that you have to carry through is could you apply the law to
24 the facts so that if the government, which has to prove the
25 case --

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1 PROSPECTIVE JUROR NAVA: Uh-huh.

2 MS. ENDRIZZI: -- has four elements to prove, and we
3 prove element number one, we prove element number two, we
4 prove element number three, but we don't give you proof beyond
5 a reasonable doubt on element number four, could you find that
6 defendant not guilty and acquit that defendant?

7 PROSPECTIVE JUROR NAVA: Boy, I would have to apply
8 the law that he told me.

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9 MS. ENDRIZZI: Absolutely.
10 PROSPECTIVE JUROR NAVA: Yes.
11 MS. ENDRIZZI: So you could find that person not
12 guilty.
13 PROSPECTIVE JUROR NAVA: Uh-huh.
14 MS. ENDRIZZI: If the government didn't bear its
15 burden and didn't prove elements number one, two, three and
16 four --
17 PROSPECTIVE JUROR NAVA: Yes.
18 MS. ENDRIZZI: -- you could find that person not
19 guilty.
20 PROSPECTIVE JUROR NAVA: Uh-huh.
21 MS. ENDRIZZI: Even if element one is molestation and
22 you hear all sorts of horrible things about a defendant --
23 PROSPECTIVE JUROR NAVA: Uh-huh.
24 MS. ENDRIZZI: -- if the government doesn't prove its
25 burden -- make its burden, you'd still vote to acquit.

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1 PROSPECTIVE JUROR NAVA: It has to be beyond a
2 reasonable doubt.
3 MS. ENDRIZZI: Okay. Just one second.
4 PROSPECTIVE JUROR NAVA: Uh-huh.
5 MS. ENDRIZZI: You mentioned in your questionnaire
6 that you go to church every week.
7 PROSPECTIVE JUROR NAVA: Uh-huh.
8 MS. ENDRIZZI: And that you're a Catholic.
9 PROSPECTIVE JUROR NAVA: Yes.
10 MS. ENDRIZZI: Okay. And I'm going to ask you to say

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11 yes or no because the Court Reporter has to write down your
12 answer, so uh-huh doesn't translate.

13 PROSPECTIVE JUROR NAVA: Okay.

14 MS. ENDRIZZI: There will be other evidence that a
15 defendant, the defendants put a religious overtone on sex and
16 justified it through the Bible. Given the fact that you go to
17 church every week, okay, can you put that aside, can you put
18 what you believe, your faith aside and still apply the facts
19 as you hear them to the law?

20 PROSPECTIVE JUROR NAVA: No.

21 MS. ENDRIZZI: How so?

22 PROSPECTIVE JUROR NAVA: I can't -- I can't put my
23 faith aside.

24 MS. ENDRIZZI: Okay. Would your -- let's put it this
25 way. If your faith -- okay.

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1 If the testimony was such that the defendants
2 justified their actions by the Bible, okay, through the Jewish
3 faith, through tenets of what they perceived to be the Mormon
4 faith --

5 PROSPECTIVE JUROR NAVA: Uh-huh.

6 MS. ENDRIZZI: -- would you find them guilty just
7 because you were so horrified as a Catholic?

8 PROSPECTIVE JUROR NAVA: Yes.

9 MS. ENDRIZZI: Okay. So what you said to me earlier,
10 that if the government didn't prove all of its -- all of the
11 elements that it had to prove and you said that you would find
12 the person not guilty, was that true?

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13 I mean, what we're trying to get to here is can you be
14 fair? And that's what everybody in this room wants.

15 PROSPECTIVE JUROR NAVA: Uh-huh.

16 MS. ENDRIZZI: We want a juror who can listen to the
17 facts, apply the law and, even if it's a tough call, if the
18 government doesn't prove up its burden beyond a reasonable
19 doubt --

20 PROSPECTIVE JUROR NAVA: Uh-huh.

21 MS. ENDRIZZI: -- they have to acquit.

22 PROSPECTIVE JUROR NAVA: So you're asking if I can be
23 fair.

24 MS. ENDRIZZI: Can you be fair?

25 PROSPECTIVE JUROR NAVA: Yes.

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1 MS. ENDRIZZI: Okay. Now there's a little bit of a
2 disconnect.

3 PROSPECTIVE JUROR NAVA: Okay.

4 MS. ENDRIZZI: Why don't you -- what concerns me is
5 when you said -- sorry. I think maybe it was my poor question
6 when I asked you to put your faith aside.

7 PROSPECTIVE JUROR NAVA: Uh-huh.

8 MS. ENDRIZZI: Okay. Everybody comes in here with who
9 they are, what they are, who they -- you know, soccer coach,
10 church or football coach or whatever.

11 Can you, you know -- and applying common sense, which
12 the judge will instruct you that you can use, can you listen
13 to the facts for all the witnesses and then hold the
14 government to what we have to prove and, if we met that

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15 burden, find the person guilty, but if we didn't meet that
16 burden, find the person not guilty?

17 PROSPECTIVE JUROR NAVA: I say yes. But I know I'm
18 contradicting myself because of my faith, but yes. I -- I
19 would say yes, I can -- I can --

20 MS. ENDRIZZI: You can do that.

21 THE COURT: When you say you may be contradicting
22 yourself, what do you mean?

23 PROSPECTIVE JUROR NAVA: Well, because my faith, you
24 know, in my faith I believe that the Bible wasn't made to hurt
25 children. And that's what I believe in, and there's nothing

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1 in there that justifies hurting children as far as I know, but
2 I don't read the whole Bible.

3 THE COURT: Let's assume something just for purposes
4 of discussion.

5 PROSPECTIVE JUROR NAVA: Okay.

6 THE COURT: I don't know what the evidence is going to
7 be yet, but Ms. Endrizzi has talked about using the Bible to
8 justify having sex with children. And suppose the evidence
9 were to show that the defendants not only did disgusting
10 things with children, had sex with children, but also used the
11 Bible and used the teachings of the Jewish faith and the
12 Mormon faith to justify what they were doing.

13 Okay. Now if you assume that and assume that that's
14 what the evidence shows --

15 PROSPECTIVE JUROR NAVA: Uh-huh.

16 THE COURT: -- and assume that there's no question

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17 about it, but also assume the government has to prove one more
18 thing in order for the defendants to be proved guilty, and
19 that is the government has to prove that at the time a
20 defendant caused one of the children to go from one state to
21 another, the defendant intended that that child engage in an
22 unlawful sexual act.

23 Now, what if the government proves all those terrible
24 things about sex and using religion to justify sex but doesn't
25 prove the intent at the time the defendant caused the person

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1 to be transported in commerce. Could you find the defendant
2 not guilty or would you still find the defendant guilty?

3 PROSPECTIVE JUROR NAVA: Well, I would have to say
4 that I would still find him guilty.

5 THE COURT: All right.

6 MS. ENDRIZZI: Okay. Nothing further.

7 THE COURT: Any other questions?

8 MS. MARKS: No thank you.

9 MR. LOCKE: No, Your Honor.

10 THE COURT: All right. Any objection to excusing Mr.
11 Nava?

12 MR. LOCKE: No, Your Honor.

13 MS. WHITE: No, Your Honor.

14 THE COURT: All right. Mr. Nava, thank you very much
15 for coming. We appreciate your candor. It will not be
16 necessary for you to come back here on the 15th. You're
17 excused. I would ask only and instruct you that you not
18 discuss the case with the other prospective jurors and don't

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19 talk about the questions that you were asked or the answers
20 that you gave. That's why we have everybody come in here
21 individually.

22 PROSPECTIVE JUROR NAVA: I understand. Yes, sir.

23 THE COURT: Thank you very much. Happy new year.

24 PROSPECTIVE JUROR NAVA: So I'm free to go home?

25 THE COURT: You're free to go.

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1 PROSPECTIVE JUROR NAVA: All right. Thank you.

2 THE COURT: I want to tell the other jurors that we're
3 taking a lunch break so they don't sit in that jury room. You
4 can go out that way. Any objection to my simply having the
5 Clerk go back into the jury room and tell the others to come
6 back at 1:30?

7 MS. WHITE: No, that's fine, Your Honor.

8 MR. LOCKE: That's fine, Your Honor.

9 MR. KAROWSKY: That's fine.

10 THE COURT: All right.

11 MS. MARKS: Your Honor, could we leave our stuff here?

12 THE COURT: Yes. We'll be in recess until 1:30.

13 (Lunch recess taken at 12:05 p.m.)

14 --- o0o ---

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1 SACRAMENTO, CALI FORNIA
2 WEDNESDAY, JANUARY 2, 2008, 1:30 P. M.
3 ---oOo---
4 (Out of the presence of prospective jurors.)
5 MS. WHITE: Your Honor, during the break, just
6 before we reconvened, I spoke with opposing counsel about
7 Jurors 10 and 12 with the idea that perhaps we could agree,
8 stipulate, to excuse for cause. They agree.
9 THE COURT: Okay.
10 MS. WHITE: Number 10, Mr. Parry, has a work
11 hardship. He indicated on his questionnaire that he would
12 not be impartial due to his wife's victimization and abuse.
13 He also expressed concurrence of a tailbone accident that
14 he had as a youth and his inability to sit for long periods
15 of time.
16 As to Number 12, that juror who is Ms. Reshke, also
17 indicated some abuse issues. But more importantly for the
18 government, she has family hardship. Her aunt was recently
19 diagnosed as having bladder cancer. She works part-time as
20 a police records specialist and indicated a need to care
21 for her aunt, as well as her mother, who also is in need of

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22 her care.

23 THE COURT: Are you all in agreement that both --

24 is it Mr. Parry or --

25 MS. WHITE: Mr. Parry.

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1 THE COURT: -- Mr. Parry and Ms. Reshke could be
2 excused for cause?

3 MS. MARKS: Yes, I am.

4 THE COURT: Have both of them come out, along
5 with Ms. Cano. I will direct Ms. Cano to sit on the
6 witness stand and excuse the other two.

7 MS. WHITE: Thank you, Your Honor.

8 (Prospective Jurors Parry, Reshke and Cano entered
9 courtroom.)

10 THE COURT: Ms. Cano, if you will sit in there.
11 Thank you.

12 Mr. Parry and Ms. Reshke, I've conferred with the
13 lawyers, and we are in agreement, that due to hardship
14 circumstances that you have described in your
15 questionnaires, that it will not be necessary for either of
16 you to remain. So the two of you are excused.

17 Thank you for coming.

18 I believe that way.

19 THE CLERK: Out through the front door.

20 THE COURT: Easier to find your way out. That is
21 a labyrinth back there. You didn't leave anything in the
22 jury room, did you?

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23 (Prospective Jurors Parry and Reshke departed
24 courtroom.)
25 THE COURT: Ms. Canon, the lawyers are going to

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1 ask you some questions now. We are going to start with
2 Mr. Locke who is the attorney for one of the defendants.
3 MR. LOCKE: Good afternoon, Ms. Canon.
4 PROSPECTIVE JUROR CANO: Good afternoon.
5 MR. LOCKE: I am Bruce Locke. I am one of
6 defense attorneys in the case.
7 THE COURT: Is your microphone working?
8 MR. LOCKE: Can you hear me?
9 PROSPECTIVE JUROR CANO: Yes.
10 MR. LOCKE: It is working.
11 THE COURT: Yes.
12 MR. LOCKE: Ms. Cano, you have a one-year-old
13 daughter?
14 PROSPECTIVE JUROR CANO: Yes, I do.
15 MR. LOCKE: In your jury questionnaire you
16 expressed it might be difficult for you to be on this case
17 because of your daughter?
18 PROSPECTIVE JUROR CANO: Yes.
19 MR. LOCKE: That is because you were told the
20 nature of the charges in this case?
21 PROSPECTIVE JUROR CANO: Yes.
22 MR. LOCKE: You thought that you might feel so

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23 protective of your daughter that you would be inclined to
24 not be impartial in this case?
25 PROSPECTIVE JUROR CANO: Yes.

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1 MR. LOCKE: Let me just make sure that it is on
2 the record and crystal clear as to what we are talking
3 about. Let me give you a situation where the evidence
4 comes into this case and it is clear that -- let's just
5 talk about one defendant for simplicity. That one
6 defendant had oral and anal and vaginal sex with a minor.
7 And that's clear. That you believe that was proved beyond
8 a reasonable doubt.

9 But the law provides that in this case the
10 government also has to prove that the minor, the child, was
11 transported across a state line by the defendant, and that
12 the defendant intended at the time that he transported the
13 child that the child would engage in criminal sex in the
14 new state that the child arrived in. And criminal sex
15 would be any sex that the minor has with an adult.

16 Okay?

17 PROSPECTIVE JUROR CANO: Uh-huh.

18 MR. LOCKE: The situation is that it's clear that
19 this defendant had oral sex with the minor, vaginal sex
20 with the minor, anal sex with the minor. But if the
21 government had no evidence that the defendant intended to
22 do that at the time that the child was transported from one
23 state to another, given the way that you feel, would it be

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24 difficult for you to acquit the -- to find the defendant
25 not guilty in that kind of a situation?

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1 PROSPECTIVE JUROR CANO: I think a portion of
2 whether they molested the child, I don't think I could be
3 impartial to that portion. As far as you mentioned finding
4 them guilty of transporting them across state lines, that
5 would have to be, you know, depending what evidence was
6 presented.

7 MR. LOCKE: It's one count. In order to be
8 guilty at all, the government would have to prove that the
9 molestation occurred, and they would have to prove the
10 child was transported across a state line and the defendant
11 was transporting the child with the intent that the child
12 engage in sex, be molested.

13 Okay?

14 PROSPECTIVE JUROR CANO: Uh-huh.

15 MR. LOCKE: And the Judge would instruct that if
16 the government doesn't prove that the defendant had that
17 intent at that time, then you should find the defendant not
18 guilty.

19 Now, would you be able to vote somebody not guilty
20 when you knew that they had actually molested the child?

21 PROSPECTIVE JUROR CANO: No.

22 MR. LOCKE: You're sure of that?

23 PROSPECTIVE JUROR CANO: Yes.

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24 MR. LOCKE: It is --
25 PROSPECTIVE JUROR CANO: Because the way I feel

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1 towards children in general and they should be protected
2 and treated.
3 MR. LOCKE: And the way parents should protect
4 their kids?
5 PROSPECTIVE JUROR CANO: Yes.
6 THE COURT: Ms. Marks, do you have any questions?
7
8 MS. MARKS: I don't, Your Honor.
9 THE COURT: Mr. Karowsky?
10 MR. KAROWSKY: No, thank you, Your Honor.
11 THE COURT: Does the government have any
12 questions?
13 MS. WHITE: Just briefly, Your Honor.
14 Is it Ms. Cano or Cano?
15 PROSPECTIVE JUROR CANO: Cano.
16 MS. WHITE: Thank you for your honesty. One
17 thing I just want to make clear. Keep in mind that at the
18 end of this trial it's the Judge that gives you the law
19 that pertains to this case, not Mr. Locke, not me. It is
20 the Judge.
21 As to each charge, as to each defendant, the Judge
22 would instruct you as to the law that you, as a prospective
23 juror, would apply to the facts that you hear in this case.
24 The facts would be delivered to you in the form of

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25 testimony and documents.

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1 Now, as the juror, it would be your job to be fact
2 finding based on the evidence that was presented to you
3 during the trial. It is the Judge, though, who gives you
4 the law. And as the juror, you would be sworn to follow
5 the law that the Judge gives you. If the Judge told you
6 that in order for you to find one of the defendants guilty
7 of one of the charges, you would be required to find, say
8 three or four elements were present, you would have to find
9 beyond a reasonable doubt that all three of those elements
10 were present in the case where there were three elements of
11 the offense.

12 As Mr. Locke was trying to get you to understand, if
13 you found that two elements of the offense took place, but
14 not one, you would be required to find the defendant not
15 guilty, even if you heard evidence that that defendant
16 engaged in some pretty nasty stuff.

17 If we hadn't proven beyond a reasonable doubt as to
18 that one element that would be required, would you still
19 find the defendant guilty, as you told Mr. Locke you would?

20 PROSPECTIVE JUROR CANO: I am a very honest
21 person and I do follow the law. So it would be my best
22 intent to follow the law. But, again, I have very strong
23 feelings in the protection of children, and I don't think
24 that I could.

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25 MS. WHITE: Thank you very much.

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1 Thank you, your Honor.
2 THE COURT: Any objection to excusing Ms. Cano?
3 MS. WHITE: No, your Honor.
4 MR. KAROWSKY: No.
5 THE COURT: Thank you, Ms. Cano. Thank you for
6 coming. It will not be necessary for you to return later.
7 You're excused. Thank you very much.
8 (Prospective Juror Cano departed courtroom.)
9 THE COURT: Bring in the next juror.
10 (Prospective Juror Ebert entered courtroom.)
11 THE COURT: Ms. Ebert, the lawyers are going to
12 ask you some questions now. We will begin with the
13 attorney for the government Ms. Endrizzi.
14 MS. ENDRIZZI: Good afternoon.
15 PROSPECTIVE JUROR EBERT: Hi.
16 MS. ENDRIZZI: Would you describe briefly what
17 are some of your responsibilities as a neurology
18 technician?
19 PROSPECTIVE JUROR EBERT: I do brain wave studies
20 for people with seizures and strokes and whatnot.
21 MS. ENDRIZZI: You evaluate those?
22 PROSPECTIVE JUROR EBERT: I run the tests. The
23 doctors evaluate.
24 MS. ENDRIZZI: Do you remember the section in the
25 questionnaire that was entitled responsibilities and

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1 started about presumption of innocence?
2 PROSPECTIVE JUROR EBERT: Uh-huh.
3 MS. ENDRIZZI: I want to work through that.
4 PROSPECTIVE JUROR EBERT: Okay.
5 MS. ENDRIZZI: You had said that you would follow
6 the instruction that you would find the defendant in a
7 criminal trial presumed innocent of the charges against him
8 or her throughout the course of the trial unless or until
9 the jury reaches a verdict as to guilt or innocence.
10 Do you still believe that today?
11 PROSPECTIVE JUROR EBERT: I think it would be
12 very difficult.
13 MS. ENDRIZZI: You think it would be difficult?
14 PROSPECTIVE JUROR EBERT: Yes.
15 MS. ENDRIZZI: If the Judge told you that you
16 would have to do that, could you do that?
17 PROSPECTIVE JUROR EBERT: I could follow the
18 Judge. On a personal level it just cut to my core.
19 MS. ENDRIZZI: You've gotten a preview of what
20 this case is about; it's ugly.
21 PROSPECTIVE JUROR EBERT: Yes.
22 MS. ENDRIZZI: There is no excuse for that.
23 PROSPECTIVE JUROR: No, it is not pretty.
24 MS. ENDRIZZI: That feeling is not --
25 MS. ENDRIZZI: Pretty broad.

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1 THE COURT: Have you learned anything about this
2 case after you filled out the form?

3 PROSPECTIVE JUROR: No, I did not go on line or
4 research anything.

5 MS. ENDRIZZI: The next responsibility was not
6 discussing the case even with other jurors until sent back
7 to deliberate.

8 Can you still do that?

9 PROSPECTIVE JUROR EBERT: (Witness nods head.)

10 MS. ENDRIZZI: You need to give an oral answer.

11 PROSPECTIVE JUROR: Yes.

12 MS. ENDRIZZI: The next question is the big
13 question, is the burden of proof question. The government
14 has the burden of proving, which means we have to prove all
15 the elements of each crime charged.

16 And if we prove all the elements beyond a reasonable
17 doubt, could you convict that person?

18 PROSPECTIVE JUROR EBERT: Yes.

19 MS. ENDRIZZI: You have a situation here where
20 you have -- give you a charge here. Interstate transport
21 of a minor for sexual acts. We have four elements. Abuse,
22 under 18. We prove all the steps and then there is a part
23 about having the intent for that child to travel across
24 state lines prior to their travel, before they engaged in
25 the sexual act.

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1 If the United States couldn't prove that to you
2 beyond a reasonable doubt, how would you vote?

3 PROSPECTIVE JUROR EBERT: I want to stay neutral,
4 but you can't do that in this setting.

5 MS. ENDRIZZI: Remember, that throughout the
6 Judge is going to give you the law.

7 PROSPECTIVE JUROR: Right.

8 MS. ENDRIZZI: And your job as a juror is to find
9 the facts and apply those facts to that law as he gives it
10 to you. Now, if the Judge told you, like he will, that the
11 government has to prove all the elements each time beyond a
12 reasonable doubt, if they don't, you must find the person
13 not guilty.

14 Could you do that?

15 PROSPECTIVE JUROR EBERT: Just being I never been
16 in a court situation before, this is all new to me. But I
17 would follow the best of my ability. And, yes, if anything
18 told me on that level that it didn't happen, I would have
19 to vote no.

20 MS. ENDRIZZI: If it didn't?

21 PROSPECTIVE JUROR EBERT: Right.

22 MS. ENDRIZZI: You wouldn't?

23 PROSPECTIVE JUROR EBERT: Put much weight on it.

24 THE COURT: You said you want to stay neutral,
25 but you can't do that in this setting. What did you mean?

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1 PROSPECTIVE JUROR EBERT: I've never been in a
2 setting like this. You learn as you go along how this is
3 played out. It's not your court TV trial.

4 THE COURT: All right.

5 MS. ENDRIZZI: You're right. You had mentioned
6 in your questionnaire that you had been inappropriately
7 touched as a child?

8 PROSPECTIVE JUROR EBERT: Yes

9 MS. ENDRIZZI: Before we get into all that, we
10 have to ask the question.

11 PROSPECTIVE JUROR EBERT: I am ready.

12 MS. ENDRIZZI: What I will ask you to do is
13 summarize what happened to you, and if we need more details
14 I'll ask. But otherwise I will let you summarize first.

15 PROSPECTIVE JUROR EBERT: I was inappropriately
16 touched by my older brother. I was about six. He was
17 about 14. It really didn't resurface with me until in my
18 twenties when he entered the picture again, and it was just
19 downhill from there.

20 MS. ENDRIZZI: He had been out of your life?

21 PROSPECTIVE JUROR EBERT: Right.

22 MS. ENDRIZZI: Where did the touching occurring?

23 PROSPECTIVE JUROR EBERT: When we were in
24 Seattle.

25 MS. ENDRIZZI: I'm sorry, on your person.

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1 PROSPECTIVE JUROR EBERT: It was sexual fondling.
2 It wasn't an intercourse situation.
3 MS. ENDRIZZI: Breast area? Vaginal?
4 PROSPECTIVE JUROR EBERT: Vaginal.
5 MS. ENDRIZZI: Obviously, you still carry that
6 with you?
7 PROSPECTIVE JUROR EBERT: It never leaves you.
8 MS. ENDRIZZI: Every juror in here is going to
9 come in with who they are. But what we need to find out
10 today is whether or not you can apply the law as given to
11 the facts without bias in the sense of -- you had said your
12 brother hadn't been punished.
13 PROSPECTIVE JUROR EBERT: Right.
14 MS. ENDRIZZI: What we don't want to have happen
15 here is you punish a defendant for something that happened
16 to you a long time ago. So could you apply those facts
17 that you will hear from witnesses, that you will see, to
18 the law that the Judge gives you, and, if the elements
19 aren't met, find the person not guilty?
20 PROSPECTIVE JUROR EBERT: It is a tough question.
21 There is a twisting to them. But I can put my story aside
22 and focus on what is at hand. I still think it would be
23 very emotional for me inside, turmoil. But I don't project
24 it on anybody else.
25 MS. ENDRIZZI: You said there was twisting?

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1 PROSPECTIVE JUROR EBERT: The way you are wording
2 things, it's tough.

3 MS. ENDRIZZI: But you could keep your experience
4 separate?

5 PROSPECTIVE JUROR EBERT: Separate .

6 MS. ENDRIZZI: Although it could cause emotional?
7

8 PROSPECTIVE JUROR EBERT: Yes, I could.

9 MS. ENDRIZZI: That is all I have for right now.
10 Thank you.

11 THE COURT: Let me just ask a couple follow-up
12 questions on that last subject. Assuming the Congress
13 speaks for the majority of the people, none of us like the
14 kind of conduct that Congress has made criminal. But there
15 is a difference between that and having such an emotional
16 response to allegations that you're unable to focus on the
17 issues in a trial.

18 What I want to know is whether you're simply telling
19 us that this kind of conduct, which is alleged, is
20 repugnant to you or whether you're going further and
21 telling us that repugnance creates such an emotional
22 response in you that you have described as turmoil that you
23 may not be able to do your job as a juror and
24 dispassionately decide the case based on the evidence.

25 PROSPECTIVE JUROR EBERT: I think any time --

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1 anybody who has been abused can never put it aside.

2 THE COURT: Do you think that? If you were in
3 the position of the defendants charged with these crimes or
4 if you were in the position of the United States Attorney
5 charged with the responsibility of presenting the evidence
6 on behalf of the government, you would be satisfied to have
7 your case heard by 12 jurors who are in the frame of mind
8 that you presently have?

9 PROSPECTIVE JUROR EBERT: No.

10 THE COURT: Only you can tell us your frame of
11 mind. Other people can tell us what they think. Only you
12 can tell us what your frame of mind is.

13 PROSPECTIVE JUROR EBERT: Truthfully, when I left
14 here a month ago, it rocked my boat for several days. It
15 really cut to the core of me, and I don't feel I can be
16 impartial. Bottom line, you want to be a juror and do your
17 civil duty. I just think it would just -- it would be
18 emotionally devastating to me.

19 MS. ENDRIZZI: Thank you.

20 THE COURT: Does anybody have any objection to
21 excusing Ms. Ebert?

22 MS. WHITE: None whatsoever.

23 THE COURT: Thank you, Ms. Ebert. Thank you for
24 your candor. You are excused.

25 PROSPECTIVE JUROR EBERT: Thank you.

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1 THE COURT: Would you rather leave this way?
2 That is like a maze, unless you left your purse.
3 PROSPECTIVE JUROR EBERT: I can go out this way,
4 straight out?
5 THE COURT: Yes.
6 PROSPECTIVE JUROR EBERT: Thanks.
7 THE COURT: Push harder.
8 (Prospective Juror Ebert departed courtroom.)
9 MR. LOCKE: One side opens and the other doesn't.
10
11 THE COURT: Can you fix that so both doors open?
12 (Prospective Juror Gentili entered courtroom.)
13 THE COURT: Are you, Mr. Gentili?
14 PROSPECTIVE JUROR GENTILI: Yes, sir.
15 THE COURT: Mr. Gentili, the lawyers are going to
16 ask you some questions. I'm going to leave it up to them.
17 We will start with the lawyer for one of the defendants.
18 This is Mr. Locke.
19 MR. LOCKE: Afternoon, Mr. Gentili.
20 PROSPECTIVE JUROR GENTILI: Afternoon.
21 MR. LOCKE: As the Judge said, I am Bruce Locke.
22 I am one of the defense attorneys in the case.
23 I notice from your questionnaire that you have three
24 children; is that right?
25 PROSPECTIVE JUROR GENTILI: Two children and four

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1 grandchildren.
2 MR. LOCKE: You obviously love your children,
3 right?
4 PROSPECTIVE JUROR GENTILI: Yes, sir.
5 MR. LOCKE: And your grandchildren?
6 PROSPECTIVE JUROR GENTILI: Yes, sir.
7 MR. LOCKE: You would feel that it would be a
8 parent's duty to protect their child?
9 PROSPECTIVE JUROR GENTILI: That is correct.
10 MR. LOCKE: Am I correct that your wife is a
11 kindergarten teacher?
12 PROSPECTIVE JUROR GENTILI: Yes.
13 MR. LOCKE: She is dealing with kids all the
14 time?
15 PROSPECTIVE JUROR GENTILI: Yes, sir.
16 MR. LOCKE: Are you involved in any way?
17 PROSPECTIVE JUROR GENTILI: In the classroom?
18 MR. LOCKE: Yes.
19 PROSPECTIVE JUROR GENTILI: Yes, I am. I
20 recently retired from my job. I go in periodically and
21 help her in the classroom.
22 MR. LOCKE: Sort of a teacher's aide?
23 PROSPECTIVE JUROR GENTILI: Correct.
24 MR. LOCKE: In the kindergarten class?
25 PROSPECTIVE JUROR GENTILI: Yes.

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1 MR. LOCKE: You are used to dealing with kids
2 that are, what, five and six years old?

3 PROSPECTIVE JUROR GENTILI: Yes.

4 MR. LOCKE: You know the nature of this case, the
5 charges in this case?

6 PROSPECTIVE JUROR GENTILI: Yes, sir.

7 MR. LOCKE: That there are allegations and there
8 is going to be testimony and allegations that the
9 defendants or some of them had oral sex, anal sex and
10 vaginal sex with minors.

11 PROSPECTIVE JUROR GENTILI: Yes, sir.

12 MR. LOCKE: There is going to be publicity about
13 this case. So people are going to know if you get selected
14 to be on the jury, that you are on the jury and eventually
15 learn that you are on this jury.

16 Do you understand that?

17 PROSPECTIVE JUROR GENTILI: Yes.

18 MR. LOCKE: The government in this case is
19 required to prove that -- I am going to use the example of
20 one defendant.

21 PROSPECTIVE JUROR GENTILI: Okay.

22 MR. LOCKE: It is easier to deal with. That the
23 defendant transported a minor child across state lines with
24 the intent that that minor child have sex with a adult in
25 the new state.

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1 Okay?

2 PROSPECTIVE JUROR GENTILI: Yes, sir.

3 MR. LOCKE: I want you to assume that it's clear,
4 the evidence is clear that a defendant did have sex with
5 that child, anal sex, oral sex, vaginal sex with that
6 child. But there is no evidence that the defendant
7 intended that at the time that the child was transported
8 from one state to the other.

9 Okay. You understand?

10 PROSPECTIVE JUROR GENTILI: I believe so.

11 MR. LOCKE: And the Judge at the end of the case
12 will tell you that the government has to prove beyond a
13 reasonable doubt that that intent existed.

14 Given the nature of what happened to the child and
15 given your feelings about children and what your wife does,
16 would you find it difficult to acquit, find the defendants
17 not guilty in that circumstance?

18 PROSPECTIVE JUROR GENTILI: If it was beyond a
19 shadow of doubt that they did not intend that to happen, I
20 realize that things happen that can't be stopped, and I
21 would be able, I believe.

22 THE COURT: Let's clarify this. You have never
23 sat on a jury before?

24 PROSPECTIVE JUROR GENTILI: No, sir.

25 THE COURT: The test is beyond a reasonable

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1 doubt. And the burden is upon the government to prove the
2 case beyond a reasonable doubt. The defense has no burden
3 to prove any facts or call any witnesses or to present any
4 evidence.

5 PROSPECTIVE JUROR GENTILI: Okay.

6 THE COURT: The question to you would be: If the
7 government fails to prove the interstate or the intention
8 at the time that the interstate transportation occurred,
9 would you have any hesitation in finding the defendants not
10 guilty? That is the question. What would your answer be?

11 If the government doesn't prove that beyond a
12 reasonable doubt, would you have any hesitation in finding
13 the defendants not guilty?

14 PROSPECTIVE JUROR GENTILI: That would be you
15 explaining the law as you mentioned earlier?

16 THE COURT: I would explain the elements that the
17 government has to prove.

18 PROSPECTIVE JUROR GENTILI: We have to go by the
19 way that you tell us, correct?

20 THE COURT: You have to follow the Court
21 instructions.

22 PROSPECTIVE JUROR GENTILI: Yes.

23 THE COURT: What is behind this question
24 Mr. Locke is asking is whether you could literally follow
25 the questions I give you in light of how terrible the

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1 evidence might be.

2 PROSPECTIVE JUROR GENTILI: That would be
3 difficult, but I would try my best.

4 MR. LOCKE: It would be difficult for you to do?

5 PROSPECTIVE JUROR GENTILI: Yes, sure.

6 MR. LOCKE: Given who you are and what you have
7 done in your life, and the kids that you have, and
8 grandkids that you have, and I imagine your wife has
9 hundreds and hundreds of kids she considers as her kids.

10 PROSPECTIVE JUROR GENTILI: Right.

11 MR. LOCKE: It would -- you wouldn't be able to
12 get rid of that inside you and decide this case without
13 that having that effect; is that what you are telling us?

14 PROSPECTIVE JUROR GENTILI: I want the innocent
15 person to be found innocent and I would want the guilty
16 person to be found guilty.

17 MR. LOCKE: And my example is one defendant
18 clearly did have sex with a minor. But there is no
19 evidence that he intended it at the time that the minor
20 crossed state lines. You understand the difficulty of what
21 I am trying to describe to you? Clearly they molested the
22 child, but technically they didn't violate the federal law.

23 And the question: Would you have difficulty finding
24 that defendant not guilty?

25 PROSPECTIVE JUROR GENTILI: I believe so.

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1 MR. LOCKE: That is based on who you are and --
2 PROSPECTIVE JUROR GENTILI: Yes.
3 MR. LOCKE: -- your history?
4 PROSPECTIVE JUROR GENTILI: Yes.
5 MR. LOCKE: And there isn't anything that you
6 could do to put that out of your mind, just the effect on
7 you?
8 PROSPECTIVE JUROR GENTILI: It would, yes.
9 MR. LOCKE: In a situation where, say, there was
10 a little bit of evidence that the defendant might have
11 intended that, but not evidence beyond a reasonable doubt,
12 you would be inclined to convict them?
13 PROSPECTIVE JUROR GENTILI: Yes, sir.
14 MR. LOCKE: I have no further questions.
15 THE COURT: Ms. Marks, any questions?
16 MS. MARKS: I do, Your Honor. Thank you.
17 Good afternoon, sir. My name is Caro Marks. I
18 represent Mr. La Brecque over there. I am going to ramp
19 this up a little bit and get kind of graphic. I just want
20 to ask you to make me a promise, which is if I say anything
21 that leaves you with haunting, ghastly thoughts or images
22 and you end up on the jury, please don't blame
23 Mr. La Brecque for what I am about to say here today.
24 PROSPECTIVE JUROR GENTILI: Okay.
25 MS. MARKS: We have a deal. I read your

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1 questionnaire. I want to now focus for a little bit on

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2 your Bible study.
3 PROSPECTIVE JUROR GENTILI: Yes.
4 MS. MARKS: I know this is personal, but you
5 understand this whole, unreal scenario we are in is very
6 personal?
7 PROSPECTIVE JUROR GENTILI: Yes.
8 MS. MARKS: I wouldn't talk to you about this if
9 I met you on the street. I have to represent my client.
10 I noticed that you go to church every Sunday.
11 PROSPECTIVE JUROR GENTILI: Yes.
12 MS. MARKS: That you -- your writing is a little
13 hard to read -- but it says, Bible Study Fellowship?
14 PROSPECTIVE JUROR: Yes, Bible Study Fellowship
15 International.
16 MS. MARKS: What is that?
17 PROSPECTIVE JUROR GENTILI: Worldwide
18 Non-Denominational Bible Study.
19 MS. MARKS: Then is that the worship team, or is
20 that a second?
21 PROSPECTIVE JUROR GENTILI: No, that is separate.
22 MS. MARKS: What is that?
23 PROSPECTIVE JUROR GENTILI: The worship team is
24 where we play music at church. So I play percussion.
25 MS. MARKS: You have been a church goer most of

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1 your life?

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2 PROSPECTIVE JUROR GENTILI: Yes.
3 MS. MARKS: That is pretty important to you?
4 PROSPECTIVE JUROR GENTILI: Yes.
5 MS. MARKS: Have you read the Bible?
6 PROSPECTIVE JUROR GENTILI: Yes.
7 MS. MARKS: That is pretty important to you?
8 PROSPECTIVE JUROR GENTILI: Yes.
9 MS. MARKS: I'm going to take some of the
10 questions Mr. Lock asked you and ramp them up a little bit.
11 The evidence to be somewhat worse than some of the words
12 that he used. For instance, I want to run some examples by
13 you. I am going to ask how you feel about them.
14 If there were evidence that in the name of religion,
15 which combined Mormon and Judaism, that adults in this
16 religion have sex with children, with some specific
17 factors, such as after oral sex, children as young as seven
18 or eight were required to drink semen out of condoms or
19 lick semen off an adult male, as an instance; or say there
20 were evidence that, in order to become indoctrinated into
21 this religion, an adult male needed to be masturbating in
22 front of his children, his own children, when they were as
23 young as seven years old. Or, hypothetically, an adult man
24 in this religion was made to -- well, voluntarily
25 ejaculated on his own children. Or if there were evidence

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1 that adult people in this so-called religion had sex with
2 their own children and took pictures of it, including two

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3 of their own daughters having sex with one of their
4 parents, all in the name of religion, all with Biblical
5 overtones or with overtones to a higher power called my
6 lord, who might very well be one of these people in this
7 courtroom. What does that make you feel when you think
8 about sitting on a jury with that kind of evidence?

9

10 PROSPECTIVE JUROR GENTILI: The fact that that is
11 happening to the children is not right, and the fact that
12 what they believe, according to what I believe, is that
13 their beliefs are not according to my beliefs. So I am
14 taking it out of context, I guess you would say.

15 MS. MARKS: How does it make you feel as a
16 spiritual and religious man, the prospect of listening to
17 that kind of evidence and trying to be fair in your
18 deliberating on a verdict with that kind of evidence being
19 heard by you?

20 PROSPECTIVE JUROR GENTILI: Makes me sad for both
21 the adult and the child.

22 MS. MARKS: Would it affect your ability to stay
23 neutral when you evaluating the evidence?

24 PROSPECTIVE JUROR GENTILI: It would be something
25 I would try to do.

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1 MS. MARKS: Would it be very hard?

2 PROSPECTIVE JUROR GENTILI: I think it would be

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3 difficult, but I would try.
4 MS. MARKS: Let me ask you this question. I
5 think Mr. Lock was getting at this a little earlier.
6 Suppose that all of this evidence that I was just talking
7 about came in, evidence of licking semen off penises and
8 drinking semen out of condoms and young children testifying
9 hypothetically they had given their own parents oral sex
10 over 400 times. Ghastly stuff.
11 Okay?
12 PROSPECTIVE JUROR GENTILI: Uh-huh.
13 MS. MARKS: And then the attorney for the
14 defendants said to you, "Look, that did happen. Clearly it
15 happened." You believe it happened, but, aha, we have a
16 loophole here. Because on this one date when one of these
17 defendants sends his children on an airplane to another
18 state, he didn't know that that was going to happen.
19 Right, what you might call a loop hole, a technicality.
20 In the face of all that grotesque evidence, how are
21 you going to handle that technicality when Judge Shubb
22 instructs you on the law? How are you going to be able to
23 put that technicality in the face of all that horrible
24 evidence?
25 PROSPECTIVE JUROR GENTILI: I have a question.

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1 MS. MARKS: Okay.
2 PROSPECTIVE JUROR: The way I understand it is
3 that the child and the parents have already committed these

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4 acts.

5 MS. MARKS: Let's just pretend that you believe
6 that that is the case.

7 PROSPECTIVE JUROR GENTILI: If the case is that
8 the parents and children committed these acts and then you
9 are telling me that the same children went across state
10 lines and performed the same act with somebody else, not
11 their parents, but it wasn't intended for them to do that?

12 MS. MARKS: Yes. We say to you, well, even
13 though -- say, I say even my client committed those gross
14 acts, he didn't know when he sent those children to the
15 other people that those acts were going to happen, would
16 you be able to neutrally evaluate my saying that when you
17 knew about all these other horrible acts that had happened?

18
19 PROSPECTIVE JUROR GENTILI: That would be
20 difficult because, if the parents are doing it with their
21 children first, that is wrong, in my opinion, and that if
22 they are sending their children to somebody that they know,
23 I would think that the people that they know that they are
24 sending their children to know about what's going on, so
25 that would pretty much leave the door wide open.

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1 MS. MARKS: So are you saying that it would be -- that
2 you couldn't vote not guilty under those circumstances
3 because of the nature of the acts that I have already

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4 described, that we were going to assume happened for
5 purposes of my question?

6 PROSPECTIVE JUROR GENTILI: (No response.)

7 MS. MARKS: I didn't ask that very well.

8 THE COURT: Let me understand. If we just
9 changed the facts a little bit in this hypothetical
10 question. Bear in mind there is no evidence yet. We are
11 just hypothetically talking about what might be the
12 evidence. But suppose the evidence was all these things
13 that Ms. Marks has just described occurred between the
14 parents and their children in Sacramento, and then they
15 sent their children out of state, not to somebody that they
16 knew, let's say, to go to school or to go to vacation, and
17 then it happened.

18 How would you look at the evidence then? And then
19 would you be able to find the defendants not guilty, if the
20 government hadn't proved that they had the intent for the
21 children to engage in sexual actions when they sent them
22 across the state line?

23 PROSPECTIVE JUROR GENTILI: Okay. So I can't --
24 what you are saying is that because the parents sent the
25 children there for vacation or for school or whatever, I

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1 can't say that the parents are guilty because of what
2 somebody else did, but because the parents weren't there;
3 is that correct?

4 THE COURT: Well, I'm trying to -- you made a

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5 good observation, and you talked about something that we
6 call circumstantial evidence. I am trying to get that out
7 of the picture and find out whether the reason that you
8 might have difficulty finding the defendant not guilty is
9 because you think, under the hypothetical, there is
10 evidence that they intended that this occur, or whether you
11 just think that it should be so influenced by what occurred
12 here in California that you'd find them guilty, even if
13 there was no evidence of what they intended the children to
14 do after they left California.

15 PROSPECTIVE JUROR GENTILI: If there is no
16 evidence that they intended that, I would have to find them
17 not guilty, if there is no evidence.

18 THE COURT: Even though you knew they had done
19 all these terrible things to the children here in
20 California?

21 PROSPECTIVE JUROR GENTILI: Yes, sir.

22 THE COURT: Would you -- you would be able to
23 find them not guilty?

24 PROSPECTIVE JUROR GENTILI: I would hope that I
25 could.

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1 MS. MARKS: Let me --

2 Can I follow up?

3 THE COURT: Yes.

4 MS. MARKS: I am going to try to simplify this,

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5 although I think Judge Shubb did that well, did simplify
6 it.

7 If the charge against one of these defendants is
8 that on July 15th, he sent a child to another state for
9 sexual purposes, and you knew beyond all doubt that all of
10 these horrible, ghastly things described had already
11 happened. And the government proved that not on July 15th,
12 but on July 16th is when they sent those kids on those
13 planes, could you still vote not guilty if the Judge told
14 you you have to find this happened on July 16th, but really
15 it happened on July 15th?

16 THE COURT: Wait, wait. No, no. On or about.
17 Remember?

18 MS. MARKS: Right, of course, Your Honor.

19 THE COURT: Not a good hypothetical.

20 MS. MARKS: Jan, do you want to?

21 THE COURT: Mr. Karowsky.

22 MR. KAROWSKY: Thank you, your Honor.

23 THE COURT: Mr. Karowsky is going to ask you some
24 questions now.

25 MR. KAROWSKY: I think what Ms. Marks is trying

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1 to get at, and we are very uncomfortable doing this.
2 Please understand that. And I understand you're not
3 pleased sitting there; it's very stylized to do this.

4 I think the real question is this: You work with
5 kids and kids are very important to you?

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6 PROSPECTIVE JUROR GENTILI: Yes, sir.
7 MR. KAROWSKY: You have children, your own
8 children and grandchildren. It makes all of us irate to
9 believe and understand that these kinds of acts take place
10 against children.
11 That upsets you, doesn't it?
12 PROSPECTIVE JUROR GENTILI: Yes, sir.
13 MR. KAROWSKY: It should. It upsets all of us.
14 I think the question really is that with that level of
15 upset and that intimacy with children that you have on a
16 positive basis, is that going to sway you so much that you
17 are so upset about the fact that the molest took place,
18 that it doesn't make any difference whether there is
19 evidence or not; you are going to convict them because they
20 committed those disgusting acts?
21 PROSPECTIVE JUROR GENTILI: That would be a
22 possibility.
23 MR. KAROWSKY: I understand that. I appreciate
24 your honesty. That is the difficulty, is that if this were
25 -- I noticed that you had your house burglarized back in

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1 '80s. So --
2 PROSPECTIVE JUROR GENTILI: Yes.
3 MR. KAROWSKY: If you were sitting here on, say,
4 with a DUI, drunk driving, for example, if you have no
5 prior background, no drunk driver's harmed your child, no

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6 burglaries -- you could be neutral and clear, right?

7 PROSPECTIVE JUROR GENTILI: Yes.

8 MR. KAROWSKY: You could listen to a drunk
9 driving case and be fair?

10 PROSPECTIVE JUROR GENTILI: And I would hope I
11 could be neutral and fair in a trial like this.

12 MR. KAROWSKY: I would hope so, too. We would
13 all hope so. We all want to think we are fair and
14 impartial. There are some things that are not fair and
15 impartial. I like the Giants baseball team. I am not fair
16 and impartial when it comes to the Giants baseball team.

17 THE COURT: That is a problem.

18 MR. KAROWSKY: I also like the River Cats, Your
19 Honor.

20 What I am trying to get to: There are certain
21 things in your life that you're a fan of, you're partial
22 to. You are not neutral or impartial -- you are partial to
23 children. Appropriate and understandable. That
24 partiality is what I think you are telling us is going to
25 sway you. So it is going to be very, very difficult in

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1 this case to look at the evidence neutrally, or, whereas,
2 in any other case maybe you could look at much more -- you
3 could look at it neutrally, whereas, in this case you
4 can't.

5 Is that what you are saying?

6 PROSPECTIVE JUROR GENTILI: What I am trying to

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7 say is that I would try to be as honest as I could. And
8 like the Judge was saying, what he said about the law. But
9 granted, I would not feel good about everything that has
10 happened and what I am being told.

11 MR. KAROWSKY: I understand. None of us probably
12 are going to feel good about it. But the question, really,
13 that you have to ask, and I think the -- trying to put
14 yourself in the context, and this following question may be
15 helpful to crystallize it.

16 Imagine yourself, that you're a defendant on trial
17 here, and the question is: Would you be comfortable with a
18 juror with your state of mind? From the perspective of the
19 defense and prosecution, would you be comfortable sitting
20 here as a defendant knowing what your state of mind
21 currently is, that you would get a fair and impartial
22 trial?

23 PROSPECTIVE JUROR GENTILI: I would hope so.

24 MR. KAROWSKY: Can you tell us, though, that you
25 know that you can do that?

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1 PROSPECTIVE JUROR GENTILI: Be fair and
2 impartial?

3 MR. KAROWSKY: In this case with these kinds of
4 facts.

5 PROSPECTIVE JUROR GENTILI: Would like to, but it
6 would be difficult.

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7 MR. KAROWSKY: Let me ask you this: You are a
8 man with who is religious?

9 PROSPECTIVE JUROR GENTILI: Yes, sir.

10 MR. KAROWSKY: And you read the Bible and you
11 understand some interpretations of the Bible?

12 PROSPECTIVE JUROR GENTILI: Yes, sir.

13 MR. KAROWSKY: If you believe the interpretations
14 of the Bible are being perverted, based on the evidence you
15 might hear, is that going to push you further over towards
16 it is difficult and make it even more difficult to vote, on
17 a technical basis, that the defendant is not guilty because
18 a technical element hasn't been proven?

19 PROSPECTIVE JUROR GENTILI: I would hope not.

20 MR. KAROWSKY: I would hope not also. We all
21 want to believe that we are fair and impartial. There are
22 times that we aren't. I think the question for you, sir,
23 is: Is this one of those times? Is this one of those
24 cases because of your unique combination of positive things
25 you do in your life: help children, teach children, protect

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1 children, think of children, go to -- treat others the way
2 you would like to be treated, is this going to be so
3 difficult that you just don't want to do it?

4 Just because you are here doesn't mean you have to
5 be here. You can say I just can't do it in this case.
6 That is really the question.

7 PROSPECTIVE JUROR GENTILI: I am not saying that

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8 I don't want to be on the jury, if that is what you are
9 asking.

10 MR. KAROWSKY: No, no. I don't think -- if we
11 could all be on a beach, we would all rather be there. I
12 think the real question is: Is this going to be so
13 difficult that you are not sure in your own mind right now
14 that you can do it?

15 PROSPECTIVE JUROR GENTILI: I just know that it
16 would be difficult.

17 MR. KAROWSKY: So difficult that you prefer not
18 to do it?

19 PROSPECTIVE JUROR GENTILI: If I prefer not to
20 do, I would tell you I'd rather not do it. I won't say
21 that.

22 MR. KAROWSKY: The graphic images that Ms. Marks
23 was talking about, is that something that is going to --

24 PROSPECTIVE JUROR GENTILI: That is going to be
25 disturbing, as the Judge mentioned.

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1 MR. KAROWSKY: Disturbing, so that it is going to
2 make it even more difficult for you to vote in a fair and
3 neutral and impartial --

4 PROSPECTIVE JUROR GENTILI: Possibly, yes, sir.

5 MR. KAROWSKY: May I just have one moment, Your
6 Honor?

7 THE COURT: Yes.

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8 MR. KAROWSKY: So let me ask you this question:

9 You understandably and appropriately want to protect and
10 love children, you say?

11 PROSPECTIVE JUROR GENTILI: Yes, sir.

12 MR. KAROWSKY: You are religious?

13 PROSPECTIVE JUROR GENTILI: Yes, sir.

14 MR. KAROWSKY: And you have a deep and abiding
15 faith?

16 PROSPECTIVE JUROR GENTILI: Yes, sir.

17 MR. KAROWSKY: Can you set aside the issues that
18 make it difficult for you to -- make it difficult, as you
19 have described the issues that make it difficult for you to
20 vote, for example, for not guilty on the examples that we
21 have given. Can you set those aside and assure us that you
22 can be fair and impartial?

23 PROSPECTIVE JUROR GENTILI: I would think because
24 of my religious beliefs it would make me be fair and
25 impartial.

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1 MR. KAROWSKY: Are you going to be able to -- I
2 notice your stepfather is a police officer and somebody
3 else was in Air Force?

4 PROSPECTIVE JUROR GENTILI: My stepbrother.

5 MR. KAROWSKY: If -- are you going to find it
6 difficult if you vote, for example, on a hypothetical
7 basis, for not guilty in this case, are you going to have
8 difficulty going back to your church and going back to your

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9 relatives and telling them you had to vote that way because
10 the government, for example, did not prove one of the
11 required requirements of their case?

12 PROSPECTIVE JUROR GENTILI: That would probably
13 be difficult.

14 MR. KAROWSKY: That makes it even more difficult
15 because you can live with yourself, but it may be difficult
16 to live with others based on that kind of situation; is
17 that what you are telling me?

18 PROSPECTIVE JUROR GENTILI: I am not sure on what
19 exactly you are saying that I would have to --

20 MR. KAROWSKY: How about I rephrase it? Let's
21 assume that the press describes all these sex acts with
22 kids. And people you know that are on this jury, and you
23 find because -- that you have to vote for not guilty. Is
24 that going to then -- and that not guilty vote, you go back
25 and they say, "What are you doing? What could you possibly

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1 have been thinking?" Are you going to have difficulty
2 voting not guilty because you're anticipating you are going
3 to take some heat from the people you know and love in law
4 enforcement and the people in your church?

5 PROSPECTIVE JUROR GENTILI: That is where I guess I would
6 have to ask the Judge for explanation because he mentioned
7 earlier today about not what I think the law says, but what
8 he tells me it says.

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9 MR. KAROWSKY: That gets to it. Will you be
10 able, when it comes down to crunch time, to follow the law
11 precisely, not let your emotions override what the law
12 tells you to do?

13 PROSPECTIVE JUROR GENTILI: That would be a
14 difficult thing, but I guess that's what I am supposed to
15 do on a jury.

16 MR. KAROWSKY: Can you do that?

17 PROSPECTIVE JUROR GENTILI: I think I could.

18 MR. KAROWSKY: Will you do that?

19 PROSPECTIVE JUROR GENTILI: I hope I could.

20 THE COURT: Ms. White. Didn't know who is going
21 to stand up first. Ms. White is going to ask you
22 questions.

23 MS. WHITE: Good afternoon, sir. I am Laurel
24 White. I am with the U.S. Attorney's Office.

25 Mr. Locke and Ms. Marks and Mr. Karowsky have been

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1 asking whether it would be difficult for you to make these
2 kinds of decisions with respect to guilt or innocence,
3 based on your history and your wife's history as a
4 kindergarten teacher and your love of children and your
5 faith. I suspect it is going to be difficult, given the
6 nature of the evidence and the seriousness of the
7 allegations, and perhaps it should be difficult, because
8 these are serious issues.

9 Given the difficulty of it, the question I have,

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10 which we all, I think, will concede, is whether you will
11 bring a fresh mind, given your experiences and your
12 background, to the testimony and have the witnesses and the
13 evidence presented to you and analyze the testimony of the
14 witnesses and that documentary evidence which you will have
15 a chance to review, if is admitted into evidence, and then
16 make factual findings based on that. Can you do that?

17 PROSPECTIVE JUROR GENTILI: Yes, ma'am.

18 MS. WHITE: Then you can take those facts that
19 you believe took place in this case, apply them to the law
20 that Judge Shubb is going to give to you? Do you think you
21 can do that?

22 PROSPECTIVE JUROR GENTILI: I think so.

23 MS. WHITE: If the Judge tells you that as to,
24 say, one charge, interstate travel with intent to engage in
25 unlawful sex with a minor, if he tells you as to that

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1 charge that there are several elements, one of which is
2 that the government has to prove that the defendant who is
3 charged with that offense had the intent that the child
4 engage in sexual conduct before the completion of that
5 transportation, and if the government fails to prove that
6 element, and if he instructs you that you have to find all
7 of the elements of the offense beyond a reasonable doubt,
8 that we failed to do one of those, would you be able to
9 find the defendant not guilty?

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10 PROSPECTIVE JUROR GENTILI: That would be
11 difficult.

12 MS. WHITE: Would you be able to follow the law
13 that the Court gave you, even given the difficulty of
14 making that kind of decision, because that is what the law
15 is and you promised to follow the law?

16 PROSPECTIVE JUROR GENTILI: Yes. That is what I
17 said earlier. If he explains it, that is what I would try
18 to do. Yes, ma'am.

19 MS. WHITE: I have nothing further.
20 Thank you.

21 THE COURT: Mr. Gentili, if you will step
22 outside. The marshal will show you a room that you can
23 stay in for about two minutes while the lawyers and I
24 decide whether we are going to ask you to come back on
25 January 15th.

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1 Do you have any of your belongings back in that room
2 there?

3 PROSPECTIVE JUROR GENTILI: No. I have
4 everything.

5 THE COURT: Good.

6 (Prospective Juror Gentili departed courtroom.)

7 THE COURT: Mr. Gentili is outside the courtroom.
8 Is there any challenge for cause?

9 MR. LOCKE: Yes, your Honor.

10 THE COURT: What is the basis of your challenge?

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11 Can you cite to any specific answers of Mr. Gentili or
12 anything else about his responses that would cause the
13 basis for your challenge?

14 MR. LOCKE: Yes, your Honor. First of all, he
15 said that it would be difficult for him to acquit the
16 defendants in a situation where, hypothetically there was,
17 that there was absolutely no evidence on one of the
18 elements of the crime. When I was questioning him, he said
19 that he would have some difficulty because of his
20 connection to children, through his own children, his
21 grandchildren and his wife being a kindergarten teacher and
22 his religious beliefs and faith. And he said, when I was
23 questioning him, that he would not be able to divorce that
24 from him. It is him; that is who he is. He would not be
25 able to put that aside. So he has a bias of protection for

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1 children that is going to make it difficult for him to
2 acquit someone in a hypothetical where there is no evidence
3 on one of the elements.

4 If he is faced with a situation where it is -- there
5 is a little bit of evidence on that other element, he is
6 going to be searching for a reason to convict; and that is
7 precisely the kind of bias that is a basis for removal for
8 cause.

9 THE COURT: Ms. Marks or Mr. Karowsky, is there
10 anything either of you wanted to add?

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11 MS. MARKS: I join with Mr. Locke and I have
12 nothing to add.

13 THE COURT: Mr. Karowsky, did you want to say
14 something?

15 MR. KAROWSKY: Yes, please, Your Honor.

16 I thought what Mr. Locke said -- I think it goes one
17 step further. I think the question in this case that I
18 took a look, United States ex rel. Coleman v. Ryan, 1998 WL
19 292998.

20 MS. WHITE: Say again.

21 MR. KAROWSKY: 1998, WL 292988. It is quoting
22 from Reynolds versus United States, 98 U.S. 145 at 156,
23 which is a 1987 case. It talks about the nature and
24 strength of the juror's opinions. If the case, the way I
25 understand it, if they have difficulty setting aside that,

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1 that raises the presumption of partiality and that
2 presumption is only overcome when the juror says that they
3 can set that aside and base their verdict on the evidence
4 exclusively. And I don't think that -- when he kept saying
5 it was difficult, it would be difficult, it would be
6 difficult, that he is not saying explicitly that he could
7 set those things aside.

8 So it is not just a question of difficulty. That, I
9 think, we can see. He is not saying he would set it aside.
10 That is the standard that needs to be looked at.

11 THE COURT: All right.

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12 Ms. White, anything you want to say?

13 MS. WHITE: Well, Your Honor, the government
14 objects. We all bring our own experiences and background.
15 I think there are very few people who are going to be --
16 undergo this process who would say that they don't wish to
17 protect children. That makes Mr. Gentili part of the norm,
18 not the exception. He did say in response to my questions
19 that he would be able to base a verdict, based on the
20 evidence presented to him in the form of witness testimony,
21 as well as documentary evidence. Solely on the evidence
22 presented in court.

23 He also said, I quoted this, because of my faith I
24 could be fair and impartial. And he also said that he
25 would follow the law the Court gave. He kept coming back

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1 to that several times. I think, as indicated, this is
2 going to be difficult. The fact that it is a difficult
3 decision, however, should not be the determinative factor.
4 What is critical is whether he could be fair and impartial.
5 He said he could, and he also cited his faith as the basis
6 for his impartiality. And then said, he looked to you,
7 said, "I would do what you would tell me to do."

8

9 THE COURT: All right. This is a difficult
10 decision. The idea in voir dire should not be to work the
11 potential juror around into saying something that causes

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12 his disqualification. Nor should the idea on the other
13 side be to work him around into saying that he can be fair
14 so that the record will support your respective positions.
15 I know I can find statements on his part that, when looked
16 at on a cold hard record, would support the decision either
17 to let him go or to keep him.

18 I have to look more -- look at more than just the
19 cold record in order to make this decision. I have to
20 assess the witness' demeanor when he hesitates, his facial
21 expressions and his manner of answering the questions.
22 When the Ninth Circuit sent this back to me, they expressed
23 confidence that I would be fully capable of ensuring that
24 the defendants receive an impartial trial. They left it to
25 me to use what they call the abundance of tools in the

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1 Federal Rules of Evidence in criminal procedure, as well as
2 the inherent power of the Court.

3 If you look at the cold hard record of
4 Mr. Sherwood's answers, as I suggested earlier, there are
5 things he said that someone who wasn't sitting here and
6 looking at him and getting a feel for his answers could say
7 would justify excusing him. The difference is, I am here.
8 I do observe him, and I was satisfied from his answers, not
9 only that there was support for keeping him but that he
10 would make a good juror. And I denied the request.

11 Frankly, I don't have the same feeling about
12 Mr. Gentili I think he is going to try to be fair. But

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13 this is where my mindset that I described earlier comes
14 into play. I have to read between the lines to ferret out
15 inherent prejudice, inherent inability to be totally
16 objective and inherent tendency to be overcome by passion,
17 emotion or sympathy.

18 Here Mr. Gentili, when he was being questioned by
19 Mr. Locke, hesitated many times when the crucial question
20 was put to him. He kept talking about how difficult it
21 would be for him, even though he would ultimately come back
22 to the statement that he would try to be fair. I must
23 comment that when Ms. Marks got up and for the first time
24 put to one of these potential jurors the graphic details of
25 some of the testimony that might come out, he didn't look

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1 so bad. When he was asked how this made him feel, he said
2 it made him feel sad for both the adult and the child.
3 That is not the response I would expect from someone who is
4 going to be sympathetic. My response wouldn't be that it
5 would make me feel sad. It would make me feel mad, but not
6 sad.

7 Coming back to my overall impression, I am not
8 comfortable that he is a juror who is going to set aside
9 his emotions, and I reach that from listening to what he
10 had to say. Not only from his words, but his manner in
11 answering the questions. And if I am going to accomplish
12 what the Ninth Circuit wanted me to accomplish, I am going

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13 to have to make these kinds of close decisions. In this
14 case, I am going to exercise the Court's discretion and
15 excuse Mr. Gentili for cause.

16 If you will have him come back, I will tell him.
17 And then we will take a short recess.

18 (Prospective Juror Gentili entered courtroom.)

19 THE COURT: Mr. Gentili, you can stay right
20 there. I want to thank you very much for coming. It will
21 not be necessary for you to return, and so you are excused
22 with the thanks of the Court. If you do see any of the
23 other jurors, prospective jurors, before this whole process
24 is over, I am going to instruct you not to talk about any
25 of the questions that were asked to you or your answers to

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1 any of those questions. We appreciate your candor. Thank
2 you for coming.

3 PROSPECTIVE JUROR GENTILI: Thank you.

4 (Prospective Juror Gentili departed courtroom.)

5 THE COURT: The court will be in recess for 15
6 minutes.

7 MS. MARKS: Can we have -- are we coming back
8 Monday or is Monday no?

9 THE COURT: No Monday. We are coming back
10 Tuesday.

11 MS. MARKS: Thank you.

12 (Recess taken.)

13 THE COURT: The next one is Mr. Cowell.

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14 (Prospective Juror Cowell entered courtroom.)

15 THE COURT: Mr. Cowell, good afternoon. The
16 lawyers are going to ask you some questions now. We will
17 start with the attorney for government, Ms. White.

18 MS. WHITE: Good afternoon, Mr. Cowell.

19 PROSPECTIVE JUROR COWELL: Good afternoon.

20 MS. WHITE: You are a transportation engineer.

21 What do you do as a transportation engineer?

22 PROSPECTIVE JUROR COWELL: Design roadways for
23 CalTrans.

24 MS. WHITE: You indicated in your questionnaire
25 that you have prior jury experience?

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1 PROSPECTIVE JUROR COWELL: That is correct.

2 MS. WHITE: I don't know what the verdicts were,
3 but can you tell me what the nature of the cases were, if
4 you recall?

5 PROSPECTIVE JUROR COWELL: I think it was about
6 20 years ago. Let's see. One was a situation where a
7 person was using a vehicle to -- as a weapon to try to run
8 over somebody. And the other one was a situation where a
9 rock was thrown through a windshield, and they were trying
10 to determine whether the person who is the defendant was
11 guilty or not.

12 MS. WHITE: Thank you.

13 When you were here last and reading the

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14 questionnaire, I assume you're somewhat aware of the nature
15 of the allegations and charges facing these defendants,
16 correct?

17 PROSPECTIVE JUROR COWELL: Yes.

18 MS. WHITE: They have been charged in nine
19 counts, six of which involve the interstate transportation
20 for the purposes of having sex, unlawful sex, with minors.

21 Is that generally your understanding?

22 PROSPECTIVE JUROR COWELL: I wasn't aware the
23 interstate transportation part.

24 MS. WHITE: They are not facing what would
25 otherwise be called lewd and lascivious acts or child

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1 molestation charges. The charges allege, at least in some
2 of them, that they transported or aided and abetted the
3 transportation of minors with the intent that those minors
4 engage in unlawful sexual conduct. There has to be an
5 interstate travel element to prove those offenses. And you
6 would have to establish -- the government would bear the
7 burden of proving beyond a reasonable doubt that that
8 transportation occurred. The government would also bear
9 the burden of proving that the defendants formed the
10 intent, that at least one of the purposes of that travel
11 was that these minors engage in unlawful sexual conduct.

12 Do you understand that?

13 PROSPECTIVE JUROR COWELL: Okay.

14 MS. WHITE: The government doesn't have to prove

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15 that sex actually occurred. But the evidence likely will
16 show that after the travel was completed sex acts did
17 occur. And while I apologize for having to discuss the
18 nature of this, as a prospective juror, you may sit on the
19 jury, you are likely going to hear evidence that the minors
20 were engaged in acts involving vaginal intercourse, sodomy,
21 oral copulation and other like conduct.

22 Now at the close of this case, Judge Shubb will
23 instruct you as to the law to apply to the facts that you,
24 as a juror, find were present in this case.

25 Do you believe that you could follow the instruction

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1 that you may only reply upon evidence and testimony that is
2 offered into evidence as the basis of your fact-finding in
3 this particular case?

4 PROSPECTIVE JUROR COWELL: Yes, I do.

5 MS. WHITE: Would you be able to apply those
6 facts to the law that Judge Shubb gives you?

7 PROSPECTIVE JUROR COWELL: Yes, I could.

8 MS. WHITE: Even if you were to disagree with the
9 law?

10 PROSPECTIVE JUROR COWELL: I think that I have to
11 somehow put away what I personally believe and somehow try
12 to follow the Judge's directions. So it would be
13 difficult, but I would do my best.

14 MS. WHITE: Let me ask this hypothetical. As I

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15 indicated, one of the elements that the government would
16 have to prove beyond a reasonable doubt is that one or two
17 or all of these defendants formed the intent that before
18 the termination of the travel of those children or child,
19 that the purpose of their travel was that they engage in
20 sexual conduct. And there will be other elements as well.

21 Supposing you were to find that sex acts occurred at
22 the end of the travel, but supposing the government failed
23 to prove this, quote, intent element. In other words, we
24 failed to show that one or several of the defendants didn't
25 formulate the intent at the appropriate time, before the

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1 travel was completed. That means that we would fail to
2 prove that one element beyond a reasonable doubt to your
3 satisfaction.

4 Under that situation would you be able to find them
5 not guilty if the law that Judge Shubb gives you tells that
6 you have to find all four elements?

7 PROSPECTIVE JUROR COWELL: Yes. That is what the
8 Judge has told us to do; I would apply it in that way.

9 MS. WHITE: I have nothing further, Your Honor.
10 Thank you.

11 THE COURT: Mr. Locke, do you wish to ask any
12 questions?

13 MR. LOCKE: Yes, sir, please, Your Honor.

14 Mr. Cowell --

15 PROSPECTIVE JUROR COWELL: Yes.

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16 MR. LOCKE: -- my name is Bruce Locke. I am one
17 of defendants' attorneys here. I have a few questions for
18 you.

19 PROSPECTIVE JUROR COWELL: Okay.

20 MR. LOCKE: I think you told Ms. White that, in
21 answer to one of her questions about how this case would
22 go, "I have to somehow put aside what I believe."

23 What did you mean by that?

24 PROSPECTIVE JUROR COWELL: Well, I think we all
25 have personal convictions, whether it is from our

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1 background, spiritual background, and so I need to follow
2 what the Judge has ordered us to do and go about it that
3 way, to apply the law as the Court stands, I guess.

4 MR. LOCKE: Well, let me ask you about it in this
5 way because the Judge is going to tell you what the law is.

6 PROSPECTIVE JUROR COWELL: Uh-huh.

7 MR. LOCKE: If you are on the jury, you are going
8 to be the one that determines what the facts were.

9 Okay?

10 PROSPECTIVE JUROR COWELL: Okay.

11 MR. LOCKE: So my question to you is, that if
12 you're faced with a situation, and I am only going to talk
13 as if there is just one defendant, because it's easier to
14 keep in mind. You're faced with a situation where this one
15 defendant transported a child from Texas to California, and

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16 then in California, sometime afterwards, had oral and
17 vaginal and anal sex with that child. The child is 14
18 years old. Okay. But there is no evidence, the government
19 doesn't introduce any evidence that the defendant intended
20 that to happen at the time that he transported the child
21 from Texas to California.

22 Would you find it difficult to vote not guilty in
23 that case, given your beliefs?

24 PROSPECTIVE JUROR COWELL: Could you repeat?
25 Because it sounds like there was -- I don't know. Could

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1 you repeat that again?

2 MR. LOCKE: Sure. The defendant transports the
3 child.

4 PROSPECTIVE JUROR COWELL: Okay.

5 MR. LOCKE: The child is 14. From Texas to
6 California.

7 PROSPECTIVE JUROR COWELL: Uh-huh.

8 MR. LOCKE: Sometime after the child gets to
9 California, someone has sex with the child.

10 PROSPECTIVE JUROR COWELL: Is that the evidence?
11 Is that proven?

12 MR. LOCKE: This is a hypothetical question.

13 PROSPECTIVE JUROR COWELL: Okay.

14 MR. LOCKE: You assume that that is the evidence.

15

16 PROSPECTIVE JUROR COWELL: Okay.

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17 MR. LOCKE: But there is no evidence that the
18 defendant intended that to happen at the time that he
19 transported the child. Okay. So for example, it could be
20 a situation where a family moves from Texas to California.
21 But at the time that they are moving, the defendant --
22 there is no evidence that he intended to have sex with the
23 child. But then when they get there, sometime later, he
24 has sex with the child.
25 You will be faced -- you would be faced with a

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1 situation where you clearly understand and know that the
2 molestation occurred.
3 PROSPECTIVE JUROR COWELL: Uh-huh.
4 MR. LOCKE: If the judge says, "Well, another
5 element that the government has to prove is they have to
6 prove that the defendant intended that to happen at the
7 time that he transported the child."
8 PROSPECTIVE JUROR: So although it did occur, you
9 are saying he didn't intend it to -- for it to happen?
10 MR. LOCKE: There is no evidence that he intended
11 it to happen.
12 PROSPECTIVE JUROR COWELL: Okay.
13 MR. LOCKE: Would you find it difficult to acquit
14 the defendant, to find the defendant not guilty in a
15 situation where the defendant actually had sex with the
16 child?

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17 PROSPECTIVE JUROR COWELL: Yes, I would.

18 MR. LOCKE: And the example that I have given you
19 is one where there is no evidence of that intent. So even
20 where there is no evidence of intent, you would find it
21 difficult to put aside your beliefs and find the defendant
22 not guilty?

23 PROSPECTIVE JUROR COWELL: I guess if it actually
24 occurred, I know that it occurred, it sounds like what you
25 are saying to me is that it was not intended at first, but

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1 it did occur. So it seems like because there is an
2 occurrence of this event happening, then it would lead me
3 to think that the person was guilty.

4 MR. LOCKE: So the way you feel, and everybody
5 here wants you to tell us 100 percent the truth --

6 PROSPECTIVE JUROR COWELL: Uh-huh.

7 MR. LOCKE: -- as to how you feel.

8 Based upon how you feel and your feelings about
9 children, you would be looking for a way to find that that
10 intent did exist so that you could find this person guilty?

11 PROSPECTIVE JUROR COWELL: I don't know if I
12 would say that.

13 MR. LOCKE: How would you say it?

14 PROSPECTIVE JUROR COWELL: I would think that --
15 I guess this is complicated --

16 THE COURT: Let him finish. Go ahead.

17 PROSPECTIVE JUROR COWELL: Because it seems to me

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18 that if some sort of crime occurred, does it matter if
19 there was an original intent or not? Could that be
20 explained?

21 MR. LOCKE: Let me explain, try to explain it to
22 you. We're in a federal court that applies federal law.
23 So the sex that occurred in the state of California would
24 be a violation of California law. But it is only a
25 violation of federal law if there was interstate

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1 transportation --

2 PROSPECTIVE JUROR COWELL: I see.

3 MR. LOCKE: -- element to it.

4 PROSPECTIVE JUROR COWELL: That makes sense.

5 MR. LOCKE: So then the question to you is: You
6 said it would be difficult for you to acquit people when
7 you know what they have done. Right?

8 PROSPECTIVE JUROR COWELL: It would be difficult,
9 yes.

10 MR. LOCKE: Is it fair to say that when you -- if
11 you were on the jury, when you went into the jury box, the
12 way that you feel, if you knew the crime occurred, the
13 molestation, if you know the molestation occurred, you
14 would be looking for, trying to find a way to find that
15 that intent existed at the time that they crossed state
16 lines?

17 PROSPECTIVE JUROR COWELL: Can I say this? What

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18 I would like to do as a juror member is to talk it over
19 with everyone and to come up with something that we would
20 feel would be the right decision rather than my own
21 convictions.

22 MR. LOCKE: But let me just leave it at this. If
23 there is no evidence of intent, no evidence that the
24 defendant intended that at the time the transportation
25 occurred, you would find it difficult to find that

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1 defendant not guilty?

2 PROSPECTIVE JUROR COWELL: Yes. I guess you are
3 right.

4 THE COURT: Explain what you mean by that.
5 Explain why it would be difficult.

6 PROSPECTIVE JUROR COWELL: Because I would think
7 that if there has been any crime that has been -- that has
8 occurred, then -- I guess you would think that there was
9 some sort of pre- -- some intent. And so I guess I would
10 think that there really was some sort of intent to make
11 that interstate transportation issue, I guess.

12 MR. LOCKE: That comes from who you are and --

13 PROSPECTIVE JUROR COWELL: Yes.

14 MR. LOCKE: -- and your beliefs and your
15 religious belief?

16 PROSPECTIVE JUROR COWELL: That is true.

17 MR. LOCKE: Thank you.

18 THE COURT: I need to discuss this with the

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19 lawyers. Why don't you step outside here, Mr. Cowell. And
20 go out in the back area there. We may have some more
21 questions when you come back. But essentially I am going
22 to tell you whether you come back on the 15th or not.

23 (Prospective Juror Cowell departed courtroom.)

24 THE COURT: Mr. Cowell is outside the courtroom.

25 This is an example of what I was talking about. I

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1 don't want anybody working these jurors into a situation
2 where you put words in their mouth and they say something.
3 On the other hand, I want to get at their honest views.

4 It sounds to me like what he says from a layperson
5 perspective is that when something happens, there is --
6 there can be circumstantial evidence of intent to make it
7 happen. And he keeps coming back to the fact that, and I
8 don't have a transcripts of this because we don't have real
9 time anymore today, but how he would tend to find intent
10 rather than he wouldn't require that the element of intent
11 be proved. And that is entirely different.

12 We haven't told the jurors how intent is proved.
13 The instruction on intent says intent may be proved by
14 circumstantial evidence. It rarely can be proved in any
15 other way. That is the way we instruct the jury. We tell
16 them that you can infer someone's state of mind by looking
17 at what they say and what they do. And so it is not
18 prejudice or it is not improper for a juror to tell you

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19 that he could infer intent from what the people did.

20 And you keep saying, "Assume there is no evidence of
21 intent." Well, I don't know whether he is saying there is
22 no direct evidence of intent or whether he is saying I
23 infer intent from what the person did.

24 So, again, looking at the cold hard record.

25 Absolutely, Ninth Circuit says throw him out because he

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1 said the magic words. But you put the magic words in his
2 mouth after he said what I think was an entirely
3 appropriate explanation from a layperson's point of view.

4 Now if I was doing this voir dire, I would look into
5 this a little further. And that is why I had him go out.
6 Before I grant your motion, I am going to want somebody to
7 explore this further. Either me or you or the government
8 attorneys. Because I don't want to throw him out just
9 because you worked him around into saying what the Ninth
10 Circuit is going to love to put their fingers on and say
11 that you should kick him off the jury.

12 MR. LOCKE: But, Judge, I don't think -- let me
13 -- what I am trying to do in the voir dire is to find out
14 if they have a difficulty in deciding a case that is a
15 hypothetical, that is a hundred percent clear.

16 THE COURT: But your hypotheticals aren't a
17 hundred percent clear. That is my problem. You're not
18 making them clear. You are always leaving an inference
19 there of intent from the evidence. There is never evidence

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20 of intent. There is never direct evidence of intent. It
21 is always circumstantial evidence. And your hypotheticals
22 are always giving some circumstantial evidence from which a
23 jury could reach a conclusion of the defendant's intent.

24 MR. LOCKE: I could make the hypothetical better
25 by making the person sending the child, different than the

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1 person who has sex with the child.

2 THE COURT: That is what I did in the
3 hypothetical I gave the other juror. Remember, remember
4 that hypothetical? I was trying to do it. I don't know if
5 I did it perfectly, but I was trying to create a situation
6 where there was a total dearth of any evidence from which
7 you could infer intent.

8 MR. LOCKE: I didn't catch it, but now I've got
9 it.

10 THE COURT: So let's bring him back. I want to
11 explore this. I don't want to excuse him unless I am
12 really comfortable that he has some reason to be biased.

13 MR. LOCKE: Let me just add one thing, Judge, in
14 terms of putting words into their mouth. I am trying not
15 to put words into their mouths at the beginning. But when
16 they said what they've said, then I am trying to summarize
17 it.

18 THE COURT: I know. But that is where you are
19 putting words in his mouth. The best example was what we

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20 got to towards the end of this examination. When he was
21 saying what I could interpret as there was circumstantial
22 evidence of intent and, therefore, he would likely find
23 intent. And then you came back and said, "To summarize,
24 because of your experience and because of your religion,
25 you would want to find intent." It wasn't because of his

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1 experience or because of his religion, it was because of
2 the facts that you gave him in the hypothetical.

3 MR. LOCKE: It could be either one, I think.

4 THE COURT: When you ask that leading question,
5 we never know. Because you wear them down and they say,
6 "Yes, yes, yes." Then you've got the magic words. What
7 just irks me is three judges are going to look at this
8 thing on a cold hard record, take something out of context
9 and tell me what I should have done. I don't want that to
10 happen.

11 Now that we understand, let's bring him in here and
12 find out what he's really saying.

13 (Prospective Juror Cowell entered courtroom.)

14 THE COURT: Mr. Cowell, I was just talking to the
15 lawyers while you were gone about what questions they might
16 be able to ask to get at what they really want to find out.
17 Hopefully, they will be able to ask the questions a little
18 more clearer for you, and then you can answer those
19 questions.

20 PROSPECTIVE JUROR COWELL: I appreciate that,

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21 Your Honor.

22 MR. LOCKE: Mr. Cowell, let me try again with the
23 hypothetical.

24 PROSPECTIVE JUROR COWELL: Okay.

25 MR. LOCKE: The hypothetical is that adult A is

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1 in Texas and sends a child 14 years old to California where
2 adult B has sex with that child. And that's the fact, and
3 it is clear about the sex occurred.

4 THE COURT: Did it occur in Texas or California?

5 MR. LOCKE: In California. And that's the
6 evidence.

7 PROSPECTIVE JUROR COWELL: That was -- I'm glad
8 you clarified that. I thought adult A was the one who had
9 sex.

10 MR. LOCKE: Let's make adult A just the person
11 who sent. Would you have any difficulty acquitting adult A
12 if there was no evidence that adult A knew that sex was
13 going to occur?

14 PROSPECTIVE JUROR COWELL: If there was no
15 evidence, I would have no -- I wouldn't have any problems
16 with acquitting.

17 MR. LOCKE: And that is -- okay.

18 THE COURT: If you're finished, I just want to
19 make sure I understand this. It was not clear to me before
20 we took the recess what he was asking and what you were

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21 saying.
22 Intent is something that rarely can be proven by
23 direct evidence. And if you are selected as a juror, I am
24 going to instruct the jury on how intent can be proved and
25 what kind of evidence you can look at in order to determine

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1 whether the government has proved intent.
2 PROSPECTIVE JUROR COWELL: Uh-huh.
3 THE COURT: One of the things we talk about is
4 circumstantial evidence. We can determine intent sometimes
5 by looking at what people say and what they do. Then we
6 can infer what they intended from what they say or from
7 what they do. That is one of the ways intent can be
8 proved. But it still has to be proved beyond a reasonable
9 doubt.
10 PROSPECTIVE JUROR COWELL: Okay.
11 THE COURT: It is one thing to say that you would
12 be willing to look at what somebody does to determine what
13 they intended and that you might make a finding that they
14 intended something by looking at the evidence of what they
15 did. It is quite another thing to say that what they did
16 was so bad that you don't care about whether the government
17 proved that they intended to do it or not; you are just
18 going to find them guilty.
19 PROSPECTIVE JUROR COWELL: I understand that.
20 THE COURT: Those are two different things.
21 Which are you saying you would do?

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22 PROSPECTIVE JUROR COWELL: I think I am with the
23 first the one. As you gather evidence and if it seems
24 compelling that the person did it, then logical assumption
25 would be they would be guilty.

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1 THE COURT: You would look to all the evidence in
2 order to determine the intent?

3 PROSPECTIVE JUROR: Yeah.

4 THE COURT: You wouldn't go so far as to say that
5 you are not going to require the government to prove their
6 intent just because what they did was so bad?

7 PROSPECTIVE JUROR COWELL: No, your Honor.

8 THE COURT: I understand.

9 MR. LOCKE: If I might, just a few more
10 questions.

11 Given the way you feel and the way your religious
12 beliefs are and your personal beliefs, would you be more
13 inclined to find in the government's favor, given the
14 nature of these charges?

15 PROSPECTIVE JUROR COWELL: That was a question
16 that I had addressed when was filling out the affidavit in
17 December. Because one of the questions, I think, dealt
18 with would you regard the witness or testimony of an
19 officer to be above that of another common person. And I
20 believe at this time I would try to weigh the evidence on
21 all sides and try to make a just and right decision,

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22 regardless. So as far as whether to align with the
23 government or with the defendant side, I think I would take
24 into consideration the evidence and try to make the best
25 decision possible.

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1 MR. LOCKE: That wasn't exactly the question that
2 I asked.

3 PROSPECTIVE JUROR COWELL: Okay.

4 MR. LOCKE: Let's say the government is required
5 to prove each element beyond a reasonable doubt.

6 PROSPECTIVE JUROR COWELL: Uh-huh.

7 MR. LOCKE: Let's say that it's more like the
8 evidence is even.

9 PROSPECTIVE JUROR COWELL: Uh-huh.

10 MR. LOCKE: Would you not overwhelming, but
11 questionable?

12 THE COURT: In order for him to answer that I
13 think I have to tell him a little about burden of proof.

14 Have you sat on a jury before?

15 PROSPECTIVE JUROR COWELL: Yes, Your Honor.

16 THE COURT: In a criminal case?

17 PROSPECTIVE JUROR COWELL: Yes.

18 THE COURT: So you have been told previously
19 about the burden of proof before and --

20 PROSPECTIVE JUROR COWELL: It's been a while. If
21 you could refresh.

22 THE COURT: The government has the burden of

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23 proving every element of the charges by proof beyond a
24 reasonable doubt.

25 PROSPECTIVE JUROR COWELL: That's right.

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1 THE COURT: Go ahead, Mr. Locke.

2 MR. LOCKE: In a case where it is about child
3 molestation, and you are convinced that the child
4 molestation occurred, but the evidence is more iffy on the
5 element of the intent at the time the child was
6 transported, because of the way you feel, you would be
7 inclined to give the government a break and find them
8 guilty even though the evidence doesn't rise to beyond a
9 reasonable doubt?

10 PROSPECTIVE JUROR COWELL: No, sir. Because of
11 just what the judge has told us, that it has to be beyond a
12 reasonable doubt. So I think I would go with that
13 criteria.

14 MR. LOCKE: What you are telling me, if the
15 evidence is not beyond a reasonable doubt, even though the
16 way you feel about kids and your religious feelings, you
17 would vote not guilty for the defendant in that case?

18 PROSPECTIVE JUROR COWELL: This is as a jury?

19 MR. LOCKE: Yes.

20 PROSPECTIVE JUROR COWELL: Yeah. Yeah. If it's
21 not beyond a reasonable doubt, then it would have to be not
22 guilty.

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23 MR. LOCKE: You would be able to face yourself
24 and face your family and face the people in your church?
25 PROSPECTIVE JUROR COWELL: Yes, sir.

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1 MR. LOCKE: In that situation.
2 PROSPECTIVE JUROR COWELL: Uh-huh.
3 MR. LOCKE: You can promise me that you can do
4 that?
5 PROSPECTIVE JUROR COWELL: I will do that.
6 THE COURT: Ms. Marks, do you have any questions?
7 MS. MARKS: May I have a moment, please?
8 THE COURT: Yes.
9 MS. MARKS: I do, Your Honor.
10 Hello, Mr. Cowell.
11 PROSPECTIVE JUROR COWELL: Hi.
12 MS. MARKS: I am Caro Marks. I represent Mr. La
13 Brecque over here. I want to follow up on a few questions
14 and comments, in fact, Mr. Locke and Judge Shubb said to
15 you. I am going to ramp this up a little. Before I do, I
16 want to warn you I am going to get graphic here.
17 PROSPECTIVE JUROR COWELL: Okay.
18 MS. MARKS: The only think I ask is, if you end
19 up on the jury and I say something right now that offends
20 you or haunts you or bothers you, please don't take it out
21 on Mr. La Brecque. I have to do this because he's my
22 client. I know this is sort of an unreal scenario, but I
23 have to ask you these questions. I hope you can bear with

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24 me when I do that.

25 PROSPECTIVE JUROR COWELL: Okay.

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1 MS. MARKS: I want you to suppose hypothetically
2 that there is evidence in this case that you are about to
3 hear that is not disputed evidence, that you know for sure
4 happened. Two of the adult defendants here started a
5 religion. As part of the religion, they indoctrinated very
6 young children into sex with them, their own children and
7 each other's. I want you to think about this hypothetical.
8 That there were sort of ritualistic aspects to the sex with
9 children, such as maybe some of these defendants
10 hypothetically had the children lick semen off their
11 penises, drink semen out of condoms, masturbate in front of
12 their own children when their children very young, seven,
13 eight years old; that hypothetically a person might testify
14 that she is the child of one of these defendants and that
15 she was made to orally copulate her own father 500 times in
16 her childhood; that children were made to have sex with one
17 another, with the adults; that pictures might have been
18 taken; and that even more graphic and more deviant sex
19 practices were done with children from when they were seven
20 years old up to when they were 15. Furthermore, in my
21 hypothetical I want you to assume that all these deviant
22 sex practices were done in the -- ostensibly in the name of
23 this religion. And that the children were taught I have to

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24 have anal sex with you in the name of religion. I am your
25 Lord and I am going to have sex with you, even though I am

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1 40 and you are seven, because I am God and this is our
2 religion.

3 Assume you hear a lot of graphic testimony from the
4 people who suffered this, and it is testimony about sex
5 practices that you might never have even heard of before.

6 I want to know whether, assuming that you hear that
7 testimony and that you believe it, just assume for a minute
8 that you believe it, how will that affect your ability to
9 deliberate on the guilt or not of my client?

10 PROSPECTIVE JUROR COWELL: I suppose that I have to weigh
11 all the evidence, take it all in to account and then make a
12 decision.

13 MS. MARKS: Would you, if you believe that all of
14 that vile sex happened, how would you handle wanting to
15 convict these people of what they are charged with, even if
16 it isn't perfectly proved, simply because you know all of
17 this other bad stuff happened?

18 PROSPECTIVE JUROR COWELL: I guess you would go
19 on what is the evidence and try to just focus on that.
20 That is the way my approach would be.

21 MS. MARKS: Now I notice that you are a religious
22 person and you go to church and you read the Bible. And if
23 you hear evidence about another religion or a group that
24 calls itself a religion, and you felt that their doctrine

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25 essentially perverted the Bible that you read, how are you

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1 going to be neutral in the face of believing that your
2 Bible has been perverted by these people?

3 PROSPECTIVE JUROR COWELL: Well, I believe that
4 we are all sinners, and myself included, and it's part of
5 the way we are as human beings. And so, as much as
6 possible, I'll have my beliefs that I contain, but I'll try
7 to judge this or make a decision about this case in a way
8 that it would be fair and just, taking all sides into
9 consideration.

10 MS. MARKS: And will you be able to disregard
11 your own personal religious convictions even if the
12 evidence is what I told you it could be, hypothetically?

13 PROSPECTIVE JUROR COWELL: I think the
14 convictions actually are there all the time. I mean, there
15 is no way I can really separate them. But as we come
16 together as a group of jurors, I think we will be able to
17 come up with the right decision. And I am a person who has
18 been involved in different groups, whether it's meetings at
19 work where we have to come with a consensus for decision,
20 and I am, like, a team player. So I believe I will be able
21 to, should I been on a panel, I will be able to make the
22 right decision based also on my Biblical convictions, yes.
23 But also taking into consideration everybody's view
24 points.

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25 MS. MARKS: Suppose the rest of the team who

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1 would be your fellow jurors are so horrified by some of
2 this evidence I hypothetically described, that that their
3 feelings are, or you get the sense that their feelings are,
4 regardless if the government proves the actual charges
5 perfectly, that this other behavior is so just so vile that
6 these guys just need to be convicted. Won't that be hard
7 for you?

8 PROSPECTIVE JUROR COWELL: Hard for me to what?

9 MS. MARKS: To stand your ground in the face of
10 11 other people having a really hard time with this graphic
11 evidence.

12 PROSPECTIVE JUROR COWELL: And they are wanting
13 to convict?

14 MS. MARKS: Just because they believe all this
15 other stuff happened.

16 PROSPECTIVE JUROR COWELL: I think I would --
17 again, we would look at the evidence and focus on the
18 important issues and make sure that it is beyond a
19 reasonable doubt, and then come up with a decision.

20 MS. MARKS: I want to ask you one more question.
21 You said your Biblical convictions are always with you.

22 PROSPECTIVE JUROR COWELL: Yeah.

23 MS. MARKS: Won't having to hear this evidence of
24 other people's perverted Biblical convictions make you very
25 uncomfortable sitting in judgment on these people?

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1 PROSPECTIVE JUROR COWELL: No. I wouldn't be
2 uncomfortable only because I think we all, in some ways
3 kind of stray, diverge, from the truth now and then. I
4 would see it as that is the way we are as human beings.

5 MS. MARKS: Thank you.

6 THE COURT: Mr. Karowsky, any questions?

7 MR. KAROWSKY: No, thank you, your Honor.

8 THE COURT: Mr. Cowell, if you will step outside
9 for about two minutes, we will let you know when to come
10 back. I will tell you at that time if you can return on
11 the 15th.

12 (Prospective Juror Cowell departed courtroom.)

13 THE COURT: Mr. Cowell I think is outside the
14 courtroom. Is there any challenge for cause?

15 MS. WHITE: No, your Honor.

16 MR. LOCKE: Yes, your Honor.

17 THE COURT: What is the basis?

18 MR. LOCKE: The basis that his beliefs and his
19 religion would make it difficult for him to decide this
20 case and that he would have some difficulty. And I think
21 somebody who is going to have difficulty deciding the case
22 because of their beliefs means that their own personal
23 biases are going to affect their deliberations in the
24 jury.

25 THE COURT: I don't see that with him. We don't

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1 want a jury of individuals who have no beliefs or no
2 religious convictions. Anyone who does have moral beliefs
3 or religious convictions is going to be appalled by the
4 conduct that you lawyers have described to these
5 prospective jurors.

6 But I did not take from anything that he said that
7 he could not reach a verdict fairly, based on the evidence
8 and the law in the case. So the challenge for cause is
9 denied.

10 Have Mr. Cowell come back in and I will instruct him
11 to report here on the 15th.

12 (Prospective Juror Cowell entered courtroom.)

13 THE COURT: Mr. Cowell, you can stand right
14 there. I am instructing you to come back here in this
15 court at 9:00 a.m., on Tuesday, January the 15th for
16 further proceedings. In the mean time, I am instructing
17 you not to seek or receive any information about this case,
18 or any of the issues that you think may be involved in this
19 case, not to talk to anybody about the case until you come
20 back here on the 15th.

21 The clerk is going to give you a card with her
22 telephone number on it, if you need to talk to her in the
23 meantime. Also, she would like to have a telephone number
24 from you if we need to get in touch with you before January
25 the 15th.

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1 PROSPECTIVE JUROR: Thank you, your Honor.

2 (Prospective Juror Cowell departed courtroom.)

3 THE COURT: Bring in the next juror. Did he
4 pronounce his name Tosh or Toch?

5 MS. WHITE: Toch.

6 THE COURT: Toch.

7 (Prospective Juror Toch entered courtroom.)

8 THE COURT: Mr. Toch, come in and have a seat her
9 in the jury box. We are going to put you in the witness
10 box, and the lawyers are going to ask you some questions
11 now. So we will start with one of the lawyers for the
12 defendants. This is Mr. Locke, who is going to be asking
13 you some questions first.

14 MR. LOCKE: Good afternoon, Mr. Toch.

15 PROSPECTIVE JUROR: Afternoon.

16 MR. LOCKE: My name is Bruce Locke. As the Judge
17 said, I am one of the defense attorneys. And I have some
18 questions for you, and some of them can be a little
19 difficult. But we need to know exactly what you feel like
20 and what you think like so we can judge, we can decide
21 whether it would be appropriate for you to be in the jury
22 in case. So, be brutally frank with me when you answer the
23 questions.

24 Do you have brothers and sisters?

25 PROSPECTIVE JUROR TOCH: I do.

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1 MR. LOCKE: What are their ages?

2 PROSPECTIVE JUROR TOCH: I have one younger
3 sister who is 22 right now. She is a teacher at an
4 elementary school.

5 MR. LOCKE: I notice from your questionnaire that
6 you are a swim coach?

7 PROSPECTIVE JUROR TOCH: I am.

8 MR. LOCKE: What age group do you coach?

9 PROSPECTIVE JUROR TOCH: All over. I have from
10 eight-year-olds to 18-year-old.

11 MR. LOCKE: So you deal with young children?

12 PROSPECTIVE JUROR TOCH: Yes.

13 MR. LOCKE: And in this case, what I want to talk
14 to you about is how you feel about young kids and how it
15 would affect your being on the jury on this case.

16 You know generally what this case is about?

17 PROSPECTIVE JUROR TOCH: Yes.

18 MR. LOCKE: And that the allegation is that the
19 defendants engaged in oral, anal and vaginal sex with young
20 girls, right?

21 PROSPECTIVE JUROR TOCH: Hmm.

22 MR. LOCKE: Would the facts that this is about
23 this case --

24 MS. WHITE: I am going to object. That actually
25 misstates the charges.

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1 THE COURT: Well, It's not so much the charges as
2 it is what Mr. Locke thinks the evidence might be. So why
3 don't you rephrase that, Mr. Locke. That does not state
4 the charges, but if you think that is what the evidence is
5 going to consist of, you may ask the question. MS.

6 WHITE: Thank you.

7 MR. LOCKE: There will be evidence in this case
8 that the male defendants had sex, as I described, with
9 girls as young as seven for oral sex, and 14 for oral, anal
10 and vaginal sex. Now, would the way you feel about
11 children, in particular young children, would that make it
12 difficult for you to be on this case?

13 PROSPECTIVE JUROR TOCH: I would like to think
14 that I am capable of being fair in thinking about the case,
15 but honestly I do have strong connection with kids that age
16 and being around them every day, but I would like to think
17 that I would be able to stay fair.

18 MR. LOCKE: Fair enough.

19 You are concerned that your connection -- let me say
20 I'm concerned that your connection with the young children
21 that you have might influence you to favor the government
22 in this case.

23 PROSPECTIVE JUROR TOCH: I wouldn't say influence
24 me. I think, like I said, I think I can remain fair.

25 MR. LOCKE: Let me pose to you a situation where

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1 the evidence that comes in during the case convinces you
2 that one of the defendants did have sex with 14-year-olds,
3 and the evidence is that the other defendant was the one
4 who transported the minor from Texas to California. And
5 let me add that the Judge is going to tell you, he is going
6 instruct you, that the law is that the government has to
7 prove beyond a reasonable doubt that the defendant who
8 transported the child from Texas to California did so with
9 the intent that the child engage in the illegal sex.

10 And let me add a further element, factor. That
11 there is -- the government doesn't produce any evidence
12 that the individual who did the transportation intended
13 that to happen.

14 Would you be able to, even though you know that the
15 molestation occurred, would you have any difficulty in
16 acquitting the defendant who did the transportation?

17 PROSPECTIVE JUROR TOCH: You are stating that the
18 law says that even if the government has to prove beyond a
19 reasonable doubt that the defendant knew that that is what
20 he was transporting the girl for?

21 MR. LOCKE: Yes.

22 PROSPECTIVE JUROR TOCH: I think I might have a
23 tough time believing that. Like I said, I would like to
24 believe that I could follow the law if that is what was
25 instructed.

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1 MR. LOCKE: We all would like to believe that we
2 can follow the law. There are some situations where it's
3 very difficult to follow the law. And what I am posing to
4 you is a situation where you know that child molestation
5 took place. And knowing that, it is going to affect you.
6 Right, You are going to be angry that that occurred.

7 Would that be right?

8 PROSPECTIVE JUROR TOCH: Yes.

9 MR. LOCKE: And then if the Judge says, "But in
10 order to convict the defendant, the government has to prove
11 this other thing, too." And you are saying that it would
12 be difficult for you to vote not guilty for that defendant?

13 PROSPECTIVE JUROR TOCH: I am saying it would be
14 difficult, but I think I could do it. I think the rational
15 side of me would be able to do that. I can't give you a
16 100 percent answer.

17 MR. LOCKE: I posed a situation to you where
18 it's, the hypothetical is structured so that person is, in
19 fact, not guilty. So you're telling me that in a situation
20 where the defendant is, in fact, not guilty, you would
21 still want to vote guilty? That's what you would want to
22 do, right?

23 PROSPECTIVE JUROR TOCH: Probably, yeah.

24 MR. LOCKE: And would you have difficulty in
25 putting those feelings aside?

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1 PROSPECTIVE JUROR TOCH: I mean, I honestly don't
2 know because this is pretty far afield from anything I used
3 to be exposed to. I would like to think that I'm would be
4 able to do that. Because I consider myself to be able to
5 be rationale about these sort of things.

6 MR. LOCKE: Do you think it would be rational to
7 let that defendant go in that situation?

8 PROSPECTIVE JUROR TOCH: If that is what the law
9 states, yes.

10 MR. LOCKE: You would follow the law even though
11 it didn't appear to be the result you would want?

12 PROSPECTIVE JUROR TOCH: Well, yeah. It is not
13 about what I want; it is about the law.

14 MR. LOCKE: And you are telling me you would try
15 to do that, or you are sure you could do that?

16 PROSPECTIVE JUROR TOCH: I don't think I could be
17 sure of anything. I will say I'm fairly sure. I couldn't
18 tell you I am 100 percent sure.

19 MR. LOCKE: Okay. You can't tell me that your
20 100 percent sure that you would vote not guilty for the
21 person that I described in that hypothetical?

22 PROSPECTIVE JUROR TOCH: Yeah.

23 MR. LOCKE: That is all the questions I have.

24 THE COURT: Why is it you are not sure?

25 PROSPECTIVE JUROR TOCH: I just don't think I

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1 could be a hundred percent sure of anything I may or may
2 not do in the future. I'd say I'm reasonably sure.

3 THE COURT: Since you can't be sure of anything
4 you would do, I can appreciate that. How sure are you that
5 you could do it?

6 PROSPECTIVE JUROR TOCH: I would say in the high
7 nineties. If the letter of the law is what it states, the
8 government has to prove beyond a reasonable doubt, and they
9 can't prove it, that would be my vote. Like I said,
10 barring -- I don't know what I am going to hear in the
11 course of this trial. That might temper how I feel right
12 now.

13 THE COURT: Let's talk about -- I don't know what
14 the evidence is going to be either. Because I am just a
15 judge, and I come after the lawyers have prepared their
16 cases and they are ready for trial. But imagine, if you
17 can, the worst kind of sexual misuse or abuse of a child.
18 Just try to think the worst thing you can. And then ask
19 yourself whether, if you heard about that evidence, you
20 would still be able to listen to the rest of the evidence
21 to determine whether that element that Mr. Locke talked
22 about, of intent at the time the child was transported in
23 interstate commerce, whether you would be able to listen to
24 the evidence and decide dispassionately whether that
25 element had been proved

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1 beyond a reasonable doubt.

2 PROSPECTIVE JUROR TOCH: I believe so. Yes, I
3 believe so. Yes.

4 THE COURT: Ms. Marks, do you have any questions?

5 MS. MARKS: Yes, I do.

6 Hello, Mr. Toch.

7 PROSPECTIVE JUROR TOCH: Afternoon.

8 MS. MARKS: I am Caro Marks. I represent Michael
9 La Brecque over here. I am going to follow up on Judge
10 Shubb's question to you. I will be a little more
11 graphically, probably more graphically than you would like.

12 I want to ask you one thing, which is: If what I say
13 offends you or bothers you or haunts you, and you end up on
14 our jury, please don't take anything I say today out on my
15 client over there because I'm doing my job. Okay? Because
16 I know you understand.

17 PROSPECTIVE JUROR TOCH: I understand.

18 MS. MARKS: Let's say, hypothetically, that some
19 of the evidence Judge Shubb just mentioned, the worst kind
20 of sexual evidence you can imagine, of acts against
21 children includes stuff like this: Seven-year-old girls
22 being forced to orally copulate their own fathers and two
23 adult men, one of whom is the father of each of the girls.
24 Young girls being made to lie under their parents who are
25 having sex on top of them. Girls being told when they are

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1 seven or eight years old to lick the ejaculate off of grown
2 men's penises after performing oral sex on them. Some of
3 the girls sometimes forced to drink semen out of the
4 condoms that were used. A minor victim might,
5 hypothetically, testify she was told to perform oral sex on
6 her father, who, hypothetically, could be sitting here,
7 over 400 times while she was still a child. Grown men
8 masturbating in front of their own children when their
9 children were six- or seven-year-olds. Ejaculating on
10 their own children when the children were at the same age.
11 Taking pictures of the same children having sex with adults
12 and with each other's children, and, hypothetically, all of
13 this ghastly sexual misconduct is done in the name of a
14 religion. That there are Passover seders that involve oral
15 sex. There are days of rejoicing and of worshipping that
16 involve sex with these children.

17 My question to you is, assume you hear that
18 evidence. I'm saying, hypothetical, I want you to assume
19 you hear it, and assume you believe it all happened, for
20 years it happened. Isn't that going to affect your ability
21 to deliberate dispassionately, as Judge Shubb said, on that
22 hypothetical that Mr. Locke brought up about the intent of
23 adult A who sends a child to adult B in a different state?

24 PROSPECTIVE JUROR TOCH: I don't think it would
25 because it sounds like those are two -- obviously, what you

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1 just described is kind of beyond the pale. But those are
2 separate facts that I think I can view as dispassionately
3 as possible.

4 MS. MARKS: You don't think those facts that I
5 just narrated are so beyond the pale that they would
6 interfere or just influence you, your assessment of the
7 charges?

8 PROSPECTIVE JUROR TOCH: No, not the trafficking
9 charges you stated, no.

10 MS. MARKS: Are you sure?

11 PROSPECTIVE JUROR TOCH: Like I said, fairly
12 sure.

13 MS. MARKS: Thank you, your Honor.

14 THE COURT: Mr. Karowsky?

15 MR. KAROWSKY: No, thank you, Your Honor.

16 THE COURT: Did I ask the government?

17 MS. WHITE: We have nothing to ask, Your Honor.

18 THE COURT: Mr. Toch, if you will just step out
19 that door for about two minutes, I am going to discuss with
20 the lawyers whether we have you come back on the 15th or
21 not.

22 PROSPECTIVE JUROR TOCH: Okay.

23 THE COURT: We will call you back in and we'll
24 let you know.

25 (Prospective Juror Toch departed courtroom.)

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1 THE COURT: Mr. Toch is outside the room.

2 Is there any challenge for cause?

3 MS. WHITE: No, Your Honor.

4 MR. LOCKE: Yes, your Honor.

5 THE COURT: What is the reason for your
6 challenge?

7 MR. LOCKE: Again, Your Honor, that he said that he
8 can't be sure, that he cannot guarantee and he says, "I
9 believe so." In terms of being able to be fair and
10 impartial. And I don't think that somebody who can't
11 guarantee that they would vote not guilty. In a situation
12 where the hypothetical is that the person is not guilty,
13 should be allowed on the jury.

14 THE COURT: The only thing he said that caused me
15 some pause was in response to one of your questions. When
16 he said he would want to vote guilty under certain
17 circumstances, that standing alone would trouble me. But
18 on the whole I think he explained that. And I just didn't
19 get the feeling that he could not be fair. When he said
20 that he couldn't be sure, he was speaking in generalities
21 by saying that he could never be sure that he would or
22 wouldn't do anything in the future. That's somewhat akin
23 to what we hear lawyers say all the time when one lawyer
24 will ask a witness whether something is possible. It is
25 one of those buzz words. Even if the other lawyer is

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1 asleep, he pops up. "Objection. Anything is possible."

2 I think that is no more or no less than what this
3 witness is saying. He said he could be sure in the high
4 nineties, and that is as sure as he can be of anything that
5 he might or might not do in the future.

6 What persuades me the most is his answers to the
7 questions that I asked. I am comfortable and satisfied
8 that he would not be swayed by passion or prejudice in this
9 matter, and that he can reach a verdict based on the
10 evidence. So I am going to deny the challenge for cause.

11 Have Mr. Toch come back in, and I will instruct him
12 to return on the 15th.

13 (Prospective Juror Toch entered courtroom.)

14 THE COURT: Mr. Toch, you can stay there. I am
15 ordering you to return here to this court at 9:00 a.m., on
16 January the 15th. In the meantime, I am instructing you
17 not to discuss this case with anyone and not to seek or
18 receive any information about this case, or any issues that
19 you think may be involved in the case from any source.

20 The clerk is going to give you her card that has her
21 phone number on it if you need to be in touch with us at
22 anytime between now and the 15th. She would like you to
23 give her a phone number in we need to get in touch with
24 you. Give her a phone number.

25 Thank you.

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1 Please bring in the next juror.

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2 (Prospective Juror Sadler entered courtroom.)
3 THE COURT: Ms. Sadler.
4 PROSPECTIVE JUROR SADLER: Yes, sir.
5 THE COURT: You will have a seat there.
6 Ms. Sadler, I am going to allow the lawyers to ask you some
7 questions now. The first lawyer who will ask you questions
8 will be Ms. Endrizzi, who represents the government.
9 MS. MARKS: I can't see that person anymore.
10 There is a screen. I don't remember ever seeing all day.
11 THE COURT: That screen has been there all day.
12 I think she is sitting a little further back.
13 MS. MARKS: Thank you very much.
14 THE COURT: If you can see her, she can see you.
15 Ms. Endrizzi, you may proceed.
16 MS. ENDRIZZI: Good afternoon, Ms. Sadler. I am
17 going to ask you a completely irrelevant question that I am
18 sure people want to know. What team does your son play
19 for?
20 PROSPECTIVE JUROR SADLER: My son plays for
21 Chi cago Russi a Arena Pro Ball.
22 MS. ENDRIZZI: Getting to your questionnaire and
23 your life. You said that you work for Army Air Force
24 Federal Exchange Services?
25 PROSPECTIVE JUROR SADLER: Yes, ma'am.

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1 MS. ENDRIZZI: What is that?

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2 PROSPECTIVE JUROR SADLER: That is a government
3 supply building. We ship out orders to all of the Armed
4 Forces all over the world. That is the main headquarters
5 for ordering supplies for Marines, Air Force, all the
6 federal -- all the servicemen.

7 MS. ENDRIZZI: And you are a supervisor there; is
8 that correct?

9 PROSPECTIVE JUROR SADLER: Yes, ma'am.

10 MS. ENDRIZZI: Have you ever had to fire someone?

11 PROSPECTIVE JUROR SADLER: Yes, ma'am.

12 MS. ENDRIZZI: Let me give you a hypothetical
13 here. You are still in your position as you still are, a
14 supervisor. One of your subordinates is a friend of yours.
15 And let's make her a close friend. She goes to your
16 church. You know her very well. There is a situation
17 where your friend has been stealing supplies and, as a
18 supervisor, you talked to her. "You got to stop. You
19 can't do it anymore. You're a friend. Cut it out."

20 Yet she still keeps stealing supplies. What do you
21 do?

22 PROSPECTIVE JUROR SADLER: I goes to my manager.
23 I goes to my boss with it because that is not tolerant
24 there. I'm not going to get caught up in that. So in
25 order to keep me clear of any punishment, especially when I

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1 am aware of the situation and I know that it is wrong, yes,
2 I will report it to my boss.

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3 MS. ENDRIZZI: And your boss says to you, "Ms.
4 Sadler, you have to fire Ms. Jones. I want her
5 identification card in 15 minutes." Could you fire your
6 friend?

7 PROSPECTIVE JUROR SADLER: Yes. Yes.

8 MS. ENDRIZZI: Part of what we are looking for
9 here is to find people who are so emotionally entangled
10 that they can't look at the facts for what they are, in a
11 situation where they have too much bias. Like, for
12 instance, just to go back to that religious example.
13 Completely irrelevant case. Hypothetical.

14 You live in Stockton. Someone burns down the
15 Baptist church in the next town over, in Lodi, wherever is
16 close, and you are potentially going to be called for that
17 jury. If it is such a situation that you knew people at
18 the church, or because of your religious convictions that
19 you think you couldn't be fair to that person as a member
20 of the jury, would you tell us? If you couldn't be fair,
21 if you were so upset by the charges that you would ignore
22 the facts and you'd just vote guilty, would you say to us,
23 "I shouldn't be on this jury"?

24 PROSPECTIVE JUROR SADLER: Yes. I would tell you
25 if I couldn't judge the case equally.

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1 MS. ENDRIZZI: You couldn't tell us fairly?

2 PROSPECTIVE JUROR SADLER: Yes.

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3 MS. ENDRIZZI: Part of this is criminal charges
4 of two parts, a mental part where there is intent and an
5 act. So you need both. And six of the nine charges that
6 we have here fall under this title. Transportation of a
7 minor with intent to engage in criminal sexual activity.
8 You've got the act of transportation and you also have to
9 prove intent, that the person intended that they engage in
10 criminal sexual activity before that transport. Okay.

11 No element is greater or less than another. So I
12 have four elements: one, two, three, four. One is equal to
13 four. The criminal sexual act, whether it occurs, whether
14 it is horrific, is the same weight as the intent.

15 You with me?

16 PROSPECTIVE JUROR SADLER: Yes.

17 MS. ENDRIZZI: I keep talking. I need to get
18 that question so you can answer. You are back in the jury
19 room. You have been selected here. You are considering
20 the guilt or innocence of one defendant. You might have a
21 white board back there, and you are write element one,
22 element two, element three, element four. Defendant Jones.

23 You look at element one, and it says minor. And
24 there's been proof beyond a reasonable doubt for the minor.
25 Would you be confident in saying we have proof beyond a

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1 reasonable doubt. That is one element. Next element
2 criminal, sexual act, whatever it is, however horrible it
3 could be. Proof beyond a reasonable doubt. For element B.

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4 Element C, transport. These are all acts. You have proof
5 beyond a reasonable doubt for that. You have A, B and C;
6 one, two, three. That last part, the intent, which is just
7 as important as any other element. We didn't prove that
8 there was intent for that child to travel from one state to
9 another for the purpose of criminal sexual activity. There
10 might be a little bit of evidence, but there it is not
11 proof beyond a reasonable doubt.

12 Could you acquit or vote not guilty in that
13 situation?

14 PROSPECTIVE JUROR SADLER: I would say not
15 guilty.

16 MS. ENDRIZZI: You're sure about that?

17 PROSPECTIVE JUROR SADLER: Uh-huh.

18 MS. ENDRIZZI: So if you have one, two, three,
19 but you don't have four.

20 PROSPECTIVE JUROR SADLER: I wouldn't acquit him
21 of --

22 MS. ENDRIZZI: You don't know what acquit means?
23 That is our fault for using legalese. Acquit means to find
24 not guilty, and the Judge will instruct you that in order
25 to find somebody guilty, every single element must be

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1 proven by the government beyond a reasonable doubt.

2 The situation that I am giving you here is element
3 one, element two, element four, beyond a reasonable doubt.

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4 Horrific stuff. Drinking semen, anal, sexual, all that
5 kind of nastiness.

6 PROSPECTIVE JUROR SADLER: Yes.

7 MS. ENDRIZZI: But we don't prove intent beyond a
8 reasonable doubt to you. How do you vote, guilty or not
9 guilty?

10 PROSPECTIVE JUROR SADLER: Guilty as charged. I
11 would say guilty because you've proven three and the other
12 one is little. I would say guilty.

13 MS. ENDRIZZI: That is a little different from what
14 you said before. Every element has to be proven beyond a
15 reasonable doubt. The Judge will tell you that.

16 PROSPECTIVE JUROR SADLER: Okay.

17 MS. ENDRIZZI: You are confident that one is
18 beyond a reasonable doubt. You are confident two is beyond
19 a reasonable doubt. You are confident three is beyond a
20 reasonable doubt three.

21 Let me give you this hypothetical. You know the
22 government did not prove intent. You know it. There is no
23 evidence of intent, so we haven't met that fourth element
24 that you are required to find. But these crimes are so
25 horrible, it is child molestation. What would you do?

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1 Would you find them guilty or find them not guilty because
2 you are told you have to follow the law?

3 PROSPECTIVE JUROR SADLER: I would find them
4 guilty. I would still say he is guilty.

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5 MS. ENDRIZZI: Even though we didn't prove the
6 last element?

7 PROSPECTIVE JUROR SADLER: Yes. I would still
8 say guilty.

9 THE COURT: Why is that?

10 PROSPECTIVE JUROR SADLER: Why I say because I am
11 looking at the mental state of the children and the effect
12 that has been taken on these children, that their lives
13 have been ruined for the rest of their lives. And, you
14 know, to subject them to any more harm, and I feel they
15 would be harm to society because they are still coming in
16 society. They are still in contact with other children. I
17 wouldn't want that to happen to nobody else's children.

18 THE COURT: So the right thing to do, you believe
19 under those circumstances, would be to make sure that the
20 defendants can't do this to any other children.

21 PROSPECTIVE JUROR SADLER: Yes.

22 THE COURT: Now, if I were to tell you in my
23 instructions to the jury that you are not to be concerned
24 with punishment. What if I were to tell you the
25 punishment, if any, is for the Court to determine and not

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1 for the jury to determine? What if I were to tell you that
2 your job as jurors and your only job as jurors is to decide
3 what the facts are and then to apply the law that I give
4 you to those facts?

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5 PROSPECTIVE JUROR SADLER: I would agree. I
6 understand what you say.

7 THE COURT: What if you found the fact to be that
8 the government had not proved one of the elements of the
9 crime that they had to prove, would you find the defendant
10 guilty or not guilty?

11 PROSPECTIVE JUROR SADLER: With your instruction
12 to me, I would go with what the law say and your
13 instruction to me to do.

14 THE COURT: Now I add one more thing.

15 PROSPECTIVE JUROR SADLER: Yes.

16 THE COURT: That is, the proof of the case was
17 just what Ms. Endrizzi said it was. Horrific abuse of
18 minors. Terrible abuse. And if you know the consequences
19 would be that the defendants would be free to go out and do
20 that again if you found them not guilty, would you still be
21 able to follow my instructions and find them not guilty?

22 PROSPECTIVE JUROR SADLER: I would be able to
23 follow your instructions as you had given them to me.

24 MS. ENDRIZZI: Your Honor, I will sit down.
25 You're far clearer than I am.

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1 THE COURT: I am going to let Mr. Locke ask some
2 more questions.

3 MR. LOCKE: Ms. Sadler, when you filled out the
4 questionnaire and answered question number 74 on the
5 questionnaire, the question was that the prosecution always

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6 has the burden of proof in a criminal trial; that is, the
7 prosecution must prove each defendant's guilt beyond a
8 reasonable doubt. If the prosecution does not prove a
9 defendant's guilt beyond a reasonable doubt, will you
10 acquit the defendant of the charges against him or her?
11 And you said no.

12 Why did you say no?

13 THE COURT: She said she doesn't know what acquit
14 means; that may be the explanation.

15 MR. LOCKE: I would like to hear.

16 THE COURT: Right.

17 MR. LOCKE: Why did you say no?

18 PROSPECTIVE JUROR SADLER: I was still going back
19 to my statement as to I would not acquit if all other
20 points had been proven and there is proof that, that the
21 case has been shown to show that it was intent. I don't
22 know if whether intent or not, but it was my intention that
23 I would not allow them to be roam free, as I stated before,
24 not to give harm to somebody else's children because the
25 children's lives are -- they're destroyed now. Mentally,

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1 physically and emotionally. That is a hardship that they
2 have to deal with the rest of their lives.

3 THE COURT: Do you think you are saying two
4 different things?

5 PROSPECTIVE JUROR SADLER: I might be saying two

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6 different things.

7 THE COURT: How do you reconcile those two
8 different things, or do you reconcile them?

9 PROSPECTIVE JUROR SADLER: How would I reconcile?

10 THE COURT: How do you think they are consistent?
11 Are they consistent or inconsistent? On the one hand what
12 you just said and you said that earlier, and on the other
13 hand what you told me that you'd follow my instructions
14 even if it meant that the defendants go free.

15 PROSPECTIVE JUROR SADLER: I will follow the
16 judge's instructions to me as I stated I will.

17 THE COURT: How is that consistent with what you
18 are saying? Is it inconsistent?

19 PROSPECTIVE JUROR SADLER: You said that it is
20 not -- it won't be my duty to worry about the punishment?

21 THE COURT: Right.

22 PROSPECTIVE JUROR SADLER: I would have to put
23 that in the back shelf and stick with what the facts are in
24 the case of what we are doing.

25 THE COURT: Could you really put it on the back

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1 shelf, or would you forget about the instructions and go in
2 the jury room and do what you think is right? That is my
3 question. Would you really put it on the back shelf?

4 PROSPECTIVE JUROR SADLER: I would put it in the
5 back shelf and do what is right.

6 THE COURT: Two different things. Sometimes not

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7 everybody agrees with the law. I don't always agree with
8 the law, but I took an oath to follow the law and that is
9 what I do. If you disagree with the law, are you still
10 going to be able to follow it?

11 PROSPECTIVE JUROR SADLER: If I disagree, would I
12 still be able to follow it? Yes.

13 THE COURT: Even if it means that your verdict
14 may result in the defendant being free to go out and do
15 this to other children?

16 PROSPECTIVE JUROR SADLER: Yes.

17 THE COURT: Explain to me how that is consistent?
18 The reason this is a problem is because you haven't thought
19 about this before, because you haven't been a juror before,
20 have you?

21 PROSPECTIVE JUROR SADLER: No, sir.

22 THE COURT: This is the first time you have to
23 think about it. You are being asked to make some decision
24 here, right?

25 PROSPECTIVE JUROR SADLER: Yes, sir.

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1 THE COURT: You are going to have to make a
2 decision now about what you promise us that is going to
3 bind you three four, five, six weeks down the road when you
4 actually have to deliberate on the verdict. You have to
5 think about what the consequences of that verdict might be.
6 So this is the time to think it through and to be honest

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7 with the lawyers and me and tell us exactly how you are
8 going to look at this. Think about it. That is what we
9 need to know now. It is going to be too late if you are
10 selected as a juror for you to come back and tell
11 Mr. Locke, "Well, I was wrong when I answered your
12 question."

13 Tell me now. Suppose the law, as I give it to you
14 and the facts as you find them, require you to find the
15 defendant not guilty, even though all of these terrible
16 acts that have just be described to you may have been
17 shown, may have been proven. You may find that they were
18 committed. What is going to happen? What are you going to
19 do? Tell us how you feel.

20 PROSPECTIVE JUROR SADLER: Well, when it come
21 down to children, I am very sensitive. And I don't put my
22 emotions in front of my decision even with the scenario you
23 gave with the job. I would still say that --

24 THE COURT: There is no wrong answer, as long as
25 you tell us honestly what is in your heart and on your

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1 mi nd.

2 PROSPECTIVE JUROR SADLER: When it come down, I
3 am very sensitive towards children and violence against
4 children because I feel that their lives are ruined for the
5 rest of their lives; and here we are going to acquit, find
6 somebody not guilty, for circumstances that have already
7 been placed in front of me. How do I not know that they

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8 are not going to commit those same acts gain? I don't. I
9 don't want to take the chance.

10 THE COURT: You don't want to take the chance?

11 PROSPECTIVE JUROR SADLER: Putting them back on
12 the street to hurt nobody else's children because it could
13 be mines. It could be my child. That child have to live
14 with that the rest of their lives. The pain, the agony,
15 the shame and all of these things. And here we have people
16 that supposed to care for them, love them; and ruin their
17 lives. I don't have no feeling for that. I don't feel
18 sorry for them. If they do the crime, let them do the
19 time.

20 THE COURT: This isn't the right case for you.

21 PROSPECTIVE JUROR SADLER: I'm very sensitive.

22 MS. WHITE: Your Honor, we are prepared to
23 stipulate.

24 THE COURT: Thank you.

25 I want to thank you, Ms. Sadler, for your honesty.

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1 It's refreshing to have somebody tell us what is actually
2 on their mind and in their heart. Thank you.

3 PROSPECTIVE JUROR SADLER: I am sorry. Crimes
4 against children is not nature.

5 THE COURT: You did the right thing by telling us
6 the way you feel. I am going to excuse you. You can go
7 home now, and you don't have to come back.

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8 PROSPECTIVE JUROR SADLER: Thank you. Appreciate
9 it.

10 (Prospective Juror Sadler departed courtroom.)

11 THE COURT: All right.

12 Counsel, I am going to have the clerk bring in Ms.
13 Masty first, even though she is not next. She has to be
14 out of here by five. You never know how long these things
15 are going to take. This will be Janice Masty next.

16 (Prospective Juror Masty departed courtroom.)

17 THE COURT: Ms. Masty, I understand you have to
18 be out by 5:00. We will never go beyond 5:00 once this
19 trial starts. I want you to know that.

20 PROSPECTIVE JUROR MASTY: I don't have to be out
21 by five. I just take my insulin.

22 THE COURT: Thereabouts. Also, we are not going
23 to keep jurors waiting around once this trial starts. This
24 is a unique experience, bringing the jurors in one at the
25 time, and it's just the only way I know to do it right now.

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1 I appreciate your waiting around.

2 And the lawyers are going to ask some questions now.
3 We are going to begin with Mr. Locke who represents one of
4 the defendants in the case.

5 MR. LOCKE: Good afternoon, Ms. Masty.

6 PROSPECTIVE JUROR MASTY: Hi.

7 MR. LOCKE: I've got your questionnaire in front
8 of me. I noted that in response to question 51, which

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9 said: Is there anything about the nature of allegations in
10 this case that would effect your ability to be a fair and
11 impartial juror? You put a question mark, and then you
12 wrote in, "If any of the defendants have even a small
13 connection to exploiting children, I would find it
14 extremely repugnant!"

15 PROSPECTIVE JUROR MASTY: Yes.

16 MR. LOCKE: That is how you feel?

17 PROSPECTIVE JUROR MASTY: I am a teacher, working
18 with children my whole life.

19 MR. LOCKE: You feel protective of children?

20 PROSPECTIVE JUROR MASTY: Very much so.

21 MR. LOCKE: So even -- you know, the government
22 is by law required to prove that these defendantS committed
23 the acts with the intent, and they have to prove it beyond
24 a reasonable doubt. But what you are saying is you
25 wouldn't require beyond a reasonable doubt if --

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1 PROSPECTIVE JUROR MASTY: I guess what I was
2 saying is that, if there is going to be some sort of
3 technicality, something that is going to release people
4 that should not be, that would be very, very difficult for
5 me. I was on a -- put it on the questionnaire also, that I
6 was on a jury once before. It was just a piddly trial. It
7 was marijuana. We all knew that person was guilty, but
8 because of shoddy police work we had to release them.

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9 Again, it wasn't a big deal. This is a much bigger deal.

10 MR. LOCKE: If there were shoddy police work or
11 the government didn't prove one of the elements of the
12 crime, because of the way you feel about children and the
13 nature of the charges here, you would be inclined to find
14 the person guilty anyway?

15 PROSPECTIVE JUROR MASTY: I think I would be, to
16 tell you the truth. I don't know what else to say.

17 MR. LOCKE: The truth is perfect. Some people --
18 the nature of the charges of this case, some people react
19 to it in a way that they wouldn't be a fair and impartial
20 juror, and that is what you are telling us, right?

21 PROSPECTIVE JUROR MASTY: That is basically how I
22 feel. Yes, yes.

23 MR. LOCKE: Even if the Judge instructed you that
24 you have to follow the law?

25 PROSPECTIVE JUROR MASTY: Well, I certainly want

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1 to trust the Judge, obviously. But, again, I go back to my
2 other experience, and I think, you know, the judge had to
3 follow the law, of course. It still meant releasing
4 somebody that shouldn't be released. I have a little
5 difficulty with that part of the law.

6 MR. LOCKE: In this case one element that the
7 government has to prove beyond a reasonable doubt is that
8 the defendant transported the child from one state to
9 another with the intent that the child engage in illegal

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10 sex in the state that they arrived in.

11 PROSPECTIVE JUROR MASTY: Right.

12 MR. LOCKE: If the evidence was clear that
13 somebody had sex with the child, but there was no evidence
14 that the defendant who did the transportation intended that
15 to occur, you would still be inclined to find that person
16 guilty, given the nature of charge?

17 PROSPECTIVE JUROR MASTY: That is a pretty tough
18 questions because, obviously, I have no details, no
19 history, and we have all that later, obviously.

20 MR. LOCKE: Right. But you did say if any of the
21 defendants had even a small connection --

22 PROSPECTIVE JUROR MASTY: I guess I feel like, if
23 people were arrested for this, there must have been pretty
24 good reason.

25 MR. LOCKE: So these feelings you have, they are

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1 feelings that you would not be able to put aside?

2 PROSPECTIVE JUROR MASTY: No.

3 MR. LOCKE: Thank you, your Honor.

4 THE COURT: Ms. Marks, do you have any questions?

5 MS. MARKS: No.

6 THE COURT: Mr. Karowsky?

7 MR. KAROWSKY: No.

8 THE COURT: Does the government have any
9 questions?

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10 MS. WHITE: Yes.
11 Good afternoon.
12 PROSPECTIVE JUROR MASTY: Good afternoon.
13 MS. WHITE: I am Laurel White with the
14 government. You would, of course, be able to consider the
15 evidence of actual sex acts as evidence of intent --
16 PROSPECTIVE JUROR MASTY: Yes.
17 MS. WHITE: -- if you so chose?
18 PROSPECTIVE JUROR MASTY: Yes.
19 MS. WHITE: I guess what I really need to know is
20 would you be able to set aside the repugnance that I think
21 most people share that you described and consider only that
22 evidence that is introduced at trial and the testimony of
23 the witnesses, whether you like the law or not, be able to
24 follow the law that Judge Shubb gives you?
25 PROSPECTIVE JUROR MASTY: I think I understand all along

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1 that is what is being asked. I am trying to be honest in
2 that.
3 THE COURT: We want you to be.
4 PROSPECTIVE JUROR MASTY: It would be difficult,
5 yes. It would be very difficult.
6 MS. WHITE: Sitting there today?
7 PROSPECTIVE JUROR MASTY: Yes.
8 MS. WHITE: Difficulty aside.
9 PROSPECTIVE JUROR MASTY: Yeah.
10 MS. WHITE: Even if it is difficult, would you be

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11 able to find one of the defendants not guilty if the
12 government failed to carry its burden of proving all the
13 elements of a particular offense beyond a reasonable doubt?

14

15 PROSPECTIVE JUROR MASTY: I think I would feel
16 like I would have to.

17 MS. WHITE: Because?

18 PROSPECTIVE JUROR MASTY: Because if there really
19 were no proof if it was not just some little glitch, then
20 that would be a different case. It's little glitches I
21 don't like.

22 THE COURT: Somebody's proof may be somebody
23 else's glitch. Depends on where you are looking at it
24 from.

25 PROSPECTIVE JUROR MASTY: How would I know?

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1 THE COURT: I think as the lawyers have indicated
2 to you, crimes have elements.

3 PROSPECTIVE JUROR MASTY: Right.

4 THE COURT: Some of the elements may be, to the
5 average person, more significant than the others. But all
6 of them have to be proved before the defendant can be found
7 guilty. One of those elements might be viewed by somebody
8 as a technicality. For example, interstate commerce. That
9 is what makes a case federal. PROSPECTIVE

10 JUROR MASTY: Right.

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11 THE COURT: That is important to some people
12 because it is the only reason that the case is in federal
13 court. But to other people it may be a technicality.
14 Because the more serious allegations have to do with what
15 the defendant did, not just the interstate commerce
16 element.

17 Now, if you saw one of the elements as a
18 technicality, but that element still wasn't proved: A, how
19 would you feel about it and, B, what would you do about it?

20 PROSPECTIVE JUROR MASTY: Tough questions. Boy,
21 I feel like I am an intelligent person. And I can
22 certainly listen to all the evidence given and, hopefully,
23 use my intelligence to make a good choice, to make a good
24 decision and try not to let other things influence it.
25 That is about the best answer I can give you for that.

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1 THE COURT: Let's go back to the other case you
2 had. And you felt that it was a technicality, but it was
3 something you could live with because the charges were not
4 --

5 PROSPECTIVE JUROR MASTY: Stable.

6 THE COURT: -- big. Let's take that same case.
7 Let's say the charges were big.

8 PROSPECTIVE JUROR MASTY: Then it would have been
9 really hard.

10 THE COURT: Then what would you do?

11 PROSPECTIVE JUROR MASTY: I think it would have

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12 been hard for everybody.

13 THE COURT: Let's imagine the biggest charge you
14 could, the most horrific sexual abuse case you can think
15 of, the most repugnant conduct you can even imagine.

16 PROSPECTIVE JUROR MASTY: But because of some
17 technicality?

18 THE COURT: Well, wasn't that other case, that
19 kind of technicality.

20 PROSPECTIVE JUROR MASTY: That would be very
21 difficult, to overlook that.

22 THE COURT: So what would you do? What would you
23 have done in that case if you viewed the charges as very,
24 very serious rather than minor?

25 PROSPECTIVE JUROR MASTY: I probably would not have

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1 gone along with the rest of the jury members as I did.

2 THE COURT: You might have voted not guilty?

3 PROSPECTIVE JUROR MASTY: No, I might have voted
4 guilty.

5 THE COURT: I'm sorry. You might have voted
6 guilty?

7 PROSPECTIVE JUROR MASTY: I might have, yeah.
8 Makes me sort of a wishy-washy person, I guess.

9 THE COURT: Do you think that would have been
10 following the judge's instructions in that case?

11 PROSPECTIVE JUROR MASTY: No. Because our

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12 instructionS were to go by the letter of the law, and
13 that's is what we happened to do.

14 THE COURT: You see what I'm getting to?

15 PROSPECTIVE JUROR MASTY: I do see what you are
16 saying. I think there is a lot more at stake here.

17 THE COURT: Where you think there is a lot at
18 stake, where you think the charges are serious, might you
19 be inclined to overlook or to disregard what you perceive
20 as a technicality in the judge's instructions?

21 PROSPECTIVE JUROR MASTY: I might.

22 MS. WHITE: Let me ask you this, Ms. Masty, you
23 indicated at the very end of the questionnaire that you're
24 a teacher and that being out of class for a length of time
25 would cause a problem. Could you elaborate on the nature

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1 of the problem that would be caused?

2 PROSPECTIVE JUROR MASTY: Sure. It became an
3 even greater problem than I realized. Because the court
4 session goes Tuesday through Friday, I was told by my
5 district that I would be responsible. Because I would be
6 there on Mondays, I would be responsible for all the
7 planning and grading and everything else. That I'm
8 thinking that's not good for my kids. I have second
9 graders; they are young. Not good for my kids at all.
10 It's not good for the sub, who wouldn't get long-term. Be
11 horrible stress on me. I am there till five or 5:30. Not
12 being there every day, I can't imagine doing that, all that

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13 in one day. That is huge. That is huge for me. On top of
14 that my medical problems. I hate using that stuff

15 THE COURT: I think this problem that you have with
16 students, they come first. Any objection --

17 MS. WHITE: Absolutely not.

18 THE COURT: -- to excusing her?

19 MS. MARKS: No objection.

20 THE COURT: That answers the question.

21 Ms. Masty, I do this all the time for teachers
22 because I think education is important. The other thing is
23 when you get a short trial --

24 PROSPECTIVE JUROR MASTY: I have done a short
25 trial.

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1 THE COURT: I have teachers comment in here who
2 don't want even to take a short trail. One of the things I
3 try to impress upon them, and you might impress upon
4 others, how important it is to have that experience, to be
5 able to impart that to your students.

6 PROSPECTIVE JUROR MASTY: Right.

7 THE COURT: Especially teachers that get up in
8 junior high or high school. And you can draw on your own
9 personal experience.

10 PROSPECTIVE JUROR MASTY: I have done that.

11 THE COURT: Where it's something you'd never know
12 unless you've been.

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13 PROSPECTIVE JUROR MASTY: Right.
14 THE COURT: You're excused. Thank you.
15 PROSPECTIVE JUROR MASTY: Thank you.
16 (Prospective Juror Masty departed courtroom.)
17 THE COURT: The next juror will be Mr. Siemen.
18 MS. MARKS: Is it always this cold up here?
19 THE COURT: Last time you were complaining it was
20 too hot.
21 MS. WHITE: Don't change a thing, Your Honor. It
22 is just right.
23 THE COURT: The papa bear says it's too hot, and
24 the mama bear says it's too cold. The baby bear says it's
25 just right. I am the baby bear or you're the baby bear, I

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1 guess.
2 (Prospective Juror Siemen entered courtroom.)
3 THE COURT: Mr. Siemen, thank you for waiting
4 around. I am glad we got to you here.
5 PROSPECTIVE JUROR SIEMSEN: Thank you.
6 THE COURT: The lawyers are going to ask you some
7 questions. So we are going to begin with Ms. White, who
8 represents the United States government in this case.
9 MS. WHITE: Good afternoon, sir.
10 Just a couple of preliminary questions. You
11 indicated that -- on the questionnaire that you didn't know
12 what your father did. Did you grow up with your dad?
13 PROSPECTIVE JUROR SIEMSEN: No, I did not.

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14 MS. WHITE: I am guessing that from your previous
15 appearance here in federal court at the time when the
16 questionnaire was handed out to you and filling out the
17 questionnaire, you were advised of the nature of the
18 allegations facing these defendants.

19 PROSPECTIVE JUROR SIEMSEN: That's true.

20 MS. WHITE: You understand that they have been
21 charged with nine counts: various different allegations,
22 six of which involve the interstate transportation of
23 minors for the purpose of engaging in unlawful sexual
24 conduct, six of the counts involving different defendants.

25 As a juror, it would be your job to sit there,

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1 listen to the evidence, examine the documents that either
2 party is able to introduce, and then make a determination
3 as to the facts that are present in this particular case.
4 At the end of the trial, Judge Shubb is going to provide to
5 you the law that is applicable to these different charges
6 against the defendants. You would need to then be able to
7 determine the facts and apply those facts to the law that
8 Judge Shubb gives you.

9 As I indicated, six of the charges involve
10 allegations that the defendants transported minors across
11 state lines for the purpose of engaging in unlawful sexual
12 conduct. And as to that particular charge, there are
13 several elements that you will be instructed that the

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14 government must prove beyond a reasonable doubt before you
15 can find the defendant guilty.

16 We carry the burden. If we don't carry the burden
17 beyond a reasonable doubt as to even one of those elements,
18 the Judge will instruct you that you can't find the
19 defendant guilty. Now, as the allegations would probably
20 suggest, you likely will be hearing some fairly graphic
21 testimony from victims, witnesses, about the sexual abuse
22 that they endured at the hands of some of the defendants.
23 The government has to prove that the sexual abuse occurred.
24 But you will likely hear that these victims, witnesses, had
25 to subject to oral sex, vaginal intercourse and anal

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1 intercourse.

2 If we were able to establish to your satisfaction
3 beyond a reasonable doubt that a particular defendant
4 committed at least three of those elements, that we met
5 three of those elements of a particular offense, but failed
6 to establish a fourth element, would you be able to follow
7 the law and find that defendant not guilty?

8 PROSPECTIVE JUROR SIEMSEN: Yes, I would.

9 MS. WHITE: You indicated at Page 12 of your
10 questionnaire, and I realize that you don't have it in
11 front of you. The question was: Is there anything about
12 the nature of the allegations in this case that affect your
13 ability to be a fair and impartial juror? And your
14 response was, "I am extremely sensitive to the abuse of

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15 children in most forms. I have never been in the position
16 to test myself in this regard. " I submit that probably
17 most people haven't. But I have concerns about my ability
18 to remain open-minded.

19 Can you elaborate a little bit on what you were
20 saying there, sir?

21 PROSPECTIVE JUROR SIEMSEN: It is interesting to
22 hear it read back. I may have gone a little far in the
23 last part of that statement. But I would say that I am
24 sensitive to the plight of children that have not had it so
25 good.

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1 MS. WHITE: I don't think that makes you
2 unusual. That makes you part of the vast majority of human
3 kind. But the issue is would your sensitivity to the abuse
4 of children, particularly the evidence that I described,
5 may likely occur in this particular case, 'cause you to be
6 so overcome by passion and the abhorrence that you're
7 feeling, that you would disregard the law and perhaps
8 determine that, well, if the government met three of the
9 elements, that's good enough for me; I'm going to ignore
10 the fourth element, and I'm going to find them guilty
11 although we are required to find all four elements beyond a
12 reasonable doubt?

13 PROSPECTIVE JUROR SIEMSEN: That would not be my
14 nature to have that problem.

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15 MS. WHITE: I have nothing further, Your Honor.
16 THE COURT: Mr. Locke.
17 MR. LOCKE: Thank you, your Honor.
18 Is it Mr. Siemsen?
19 PROSPECTIVE JUROR SIEMSEN: Siemsen.
20 MR. LOCKE: Siemsen, sorry. Probably happens to
21 you --
22 PROSPECTIVE JUROR SIEMSEN: Quite frequently.
23 MR. LOCKE: -- more than once. I hope that I am
24 not the only one.
25 My name is Bruce Locke. I am one of the defense

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1 attorneys. What we are trying to do is we are trying to
2 determine if the various jurors, given the nature of the
3 charges in this case, if they would be able to be perfectly
4 fair and impartial in deciding the case.
5 You have told us in your questionnaire that you are
6 very sensitive to young children, to the plight of young
7 children; is that right? You have children of your own,
8 four children, and you have four grandchildren?
9 PROSPECTIVE JUROR SIEMSEN: Yes.
10 MR. LOCKE: Your grandchildren are ages one to
11 21.
12 PROSPECTIVE JUROR SIEMSEN: Yes.
13 MR. LOCKE: Good range. Particularly the younger
14 ones. You agree that parents have an obligation to protect
15 their children?

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16 PROSPECTIVE JUROR SIEMSEN: Absolutely.
17 MR. LOCKE: What we want to know is: Given how
18 you're sensitive to children and how you your way of living
19 is to protect young children, in a case where the evidence
20 is going to involve testimony that oral, anal and vaginal
21 sex with children as young as 14, and as young as seven
22 with respect to oral sex, and if the government is required
23 to prove that a defendant transported a child across state
24 lines with the intent that the child be engaged in sex, and
25 there was no evidence that the defendant had an intent at

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1 the time he took the child across state lines, would you be
2 able to acquit, to vote not guilty, for a defendant like
3 that?

4 PROSPECTIVE JUROR SIEMSEN: If the evidence did
5 not support it, did not prove it?

6 MR. LOCKE: It proves the sex occurred, and it
7 proves that it was a 14-year-old having sex with an adult,
8 but there was no proof that the person, the defendant who
9 transported her, intended that that was going to occur.

10 PROSPECTIVE JUROR SIEMSEN: I understand.

11 MR. LOCKE: You understand?

12 PROSPECTIVE JUROR SIEMSEN: I do now.

13 MR. LOCKE: Given the way you feel about
14 children, would you be able to vote not guilty in that
15 case?

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16 PROSPECTIVE JUROR SIEMSEN: Based on the evidence
17 or lack of evidence, yes, I would.

18 MR. LOCKE: You seem to be pretty certain of that
19 now. Why did you check that, in answer to the question:
20 Is there anything about the nature of the allegations that
21 affect your ability to be a fair and impartial? You
22 checked yes. Why did you do that?

23 PROSPECTIVE JUROR SIEMSEN: I am not sure why I
24 did that at the time.

25 MR. LOCKE: Do you think that at that time you

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1 felt that, having heard this for the first time, that you
2 wouldn't be -- you were afraid that you wouldn't be fair
3 and impartial?

4 PROSPECTIVE JUROR SIEMSEN: I think at that time
5 I probably didn't have a clear grasp on just what it meant,
6 to examine the evidence and base it on that.

7 MR. LOCKE: But now you feel -- what caused you
8 to change your opinion?

9 PROSPECTIVE JUROR SIEMSEN: The explanations I've
10 heard today.

11 MR. LOCKE: What explanations?

12 PROSPECTIVE JUROR SIEMSEN: About the evidence
13 and instructions of the Judge.

14 MR. LOCKE: If the evidence was 100 percent -- if
15 there was no evidence of intent, you understand what I am
16 saying, no evidence that this defendant intended the sex to

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17 occur at the time this defendant transported the child,
18 then you would vote not guilty?

19 PROSPECTIVE JUROR SIEMSEN: Yes.

20 MR. LOCKE: What about if there was a little bit
21 of evidence, but not proof beyond a reasonable doubt? How
22 would you vote then?

23 PROSPECTIVE JUROR SIEMSEN: Based on my
24 understanding, I would have to think that it would have to
25 be evidence beyond a reasonable doubt.

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1 MR. LOCKE: It does.

2 PROSPECTIVE JUROR SIEMSEN: I would vote
3 accordingly.

4 MR. LOCKE: You would even vote not guilty, even
5 if the result was that a defendant, who you knew was
6 involved in these kinds of situations, would walk out the
7 door free?

8 PROSPECTIVE JUROR SIEMSEN: Yes.

9 MR. LOCKE: No further questions.

10 THE COURT: Ms. Marks, any questions.

11 MS. MARKS: Yes, I do, Your Honor.

12 Hello, Mr. Siemsen. I'm Caro Marks. I represent
13 Mr. La Brecque. I am going to ask you some questions of a
14 graphic nature. I apologize for that in advance. I just
15 want you to make me the promise that if you do end up on
16 the jury, anything I say to you upsets you or haunts you or

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17 bothers you or offends you, and you end up on the jury, you
18 are not taking it out on Mr. La Brecque sitting over there.
19 I am just doing what I have to do.

20 PROSPECTIVE JUROR SIEMSEN: I understand.

21 MS. MARKS: You did write in your questionnaire
22 that you were extremely sensitive to the abuse of children
23 in most forms. Never been in a position to test yourself
24 in this regard, but have concerns about your ability to
25 remain open-minded.

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1 Do you have fewer concerns about your ability to
2 remain open-minded today? Is that what happened here?

3 PROSPECTIVE JUROR SIEMSEN: Yes.

4 MS. MARKS: What I want to do is give you some
5 idea, hypothetically, of some of the evidence that might
6 come in in this case to see whether -- to see where that is
7 on the barometer of your concerns about your ability to
8 remain open-minded. So I want to tell you that,
9 hypothetically, meaning it's possible, but not for sure,
10 but maybe, there might be some evidence of some really
11 deviant and outrageous sexual practices on children here,
12 including the routine making of girls, age seven and up, to
13 perform oral sex on their fathers, the required licking of
14 ejaculate off their fathers' penises, drink ejaculate from
15 condoms, grown men masturbating in front of their own
16 children when their own children were only seven years old.
17 There may be a witness to testify, hypothetically, that she

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18 had to perform oral sex on her father 400 times, starting
19 when she was seven years old. There may be,
20 hypothetically, evidence that two adults, defendants, had
21 sex along with two of their own children. That during that
22 group sex one of the children was forced to lick the
23 ejaculate off an adult male's penis and lick it off the
24 woman's vagina at the same time, and then was forced to
25 kiss another one of the minors, and that this and other

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1 deviant sexual acts were all done in the name of a
2 religion. A religion that the adult people in the
3 scenarios I've described prescribe to, that one of them
4 referred to himself as the lord, the other a bishop, and
5 that all of these deviant sexual acts and more were done in
6 the name of religion, for religious purposes and were
7 taught to these children at seven years old as part of a
8 religion.

9 Now with that as your hypothetical background, I
10 want to know how are you going to be able to balance what
11 you wrote before was your concern about your ability to
12 remain open-minded, if you hear that evidence that I just
13 described, and if you believe it. If it absolutely
14 happened that way, how are you going to balance your
15 ability to remain open. -- minded with my client's rights
16 to have an impartial and neutral jury?

17 PROSPECTIVE JUROR SIEMSEN: Are you asking me how

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18 I will remain open-minded or -- in the beginning you asked
19 me if I would find it disturbing or offensive? Which one
20 of those am I supposed to answer?

21 MS. MARKS: Why don't you answer the second one
22 first. I don't remember that I asked that. Would you find
23 that disturbing and offensive?

24 PROSPECTIVE JUROR SIEMSEN: Yes.

25 MS. MARKS: The second question is: How will you

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1 balance that -- how do you fit that into your concern about
2 your ability to remain open-minded? Is that going to make
3 you less likely to be open-minded, if you believe that that
4 evidence all occurred?

5 PROSPECTIVE JUROR SIEMSEN: I don't think so,
6 because I still have to go based on irrefutable evidence
7 and the burden of proof that was explained earlier.

8 MS. MARKS: Say it is all irrefutable, it
9 happened, it definitely happened, that evidence that I just
10 said happened. If you believe that, how are you going to
11 -- I am going to move back to Mr. Locke's example for a
12 minute. If you believe all the evidence I said happened,
13 irrefutable beyond a reasonable doubt it happened, isn't
14 that going to make it hard for you to consider what
15 Mr. Locke described to you as sort of technical defense or
16 a loophole defense? Is that evidence I just described to
17 you going to make you want to convict the people no matter
18 what?

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19 PROSPECTIVE JUROR SIEMSEN: No matter what?
20 MS. MARKS: Yeah. Let's say the government --
21 let's say the evidence is certain that I just described,
22 but the government doesn't prove its case on one of the
23 counts. What are you going to do?
24 MS. WHITE: Excuse me, Your Honor. I think Ms.
25 Marks meant one of the elements, not one of the counts.

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1 THE COURT: Did you mean one of the counts or one
2 of the elements?
3 MS. MARKS: On either one. On one of the
4 elements. So you believe all of that stuff I said
5 happened, but on the charged defenses the government
6 doesn't prove its case on one of the elements, and the
7 defense lawyers come out saying, "Oh, no, no. You have to
8 acquit our people because they didn't prove one of the
9 elements."
10 You are sitting over there knowing all this other
11 stuff happened.
12 PROSPECTIVE JUROR SIEMSEN: As a juror, don't we
13 get some sort of instruction on how we are supposed to deal
14 with that? I think that is what I heard earlier.
15 THE COURT: You do. And at the end of the trial
16 if you are selected as a juror, I will instruct you on all
17 of the applicable law, not just what Ms. Marks is asking
18 you about now.

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19 You can assume for answering her question that the
20 Court's instructions would be that, before you may find the
21 defendant guilty, the government must prove all of the
22 elements of the charge beyond a reasonable doubt.

23 So now she wants you to assume you find the
24 government has not proved one element, even though the
25 government presented all this other evidence that she has

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1 described. Do you find the defendant guilty or not guilty?

2 PROSPECTIVE JUROR SIEMSEN: Not guilty.

3 MS. MARKS: How do you -- so we -- Strike that.

4 So when you wrote that you weren't sure if you have
5 any strong opinions that would keep you from fulfilling
6 your responsibility as a juror in a criminal trial, has the
7 information I've given you helped you understand what your
8 responsibilities as a juror in a criminal trail are?

9 PROSPECTIVE JUROR SIEMSEN: Yes.

10 MS. MARKS: And now do you feel for sure that you
11 can execute your role as a juror?

12 PROSPECTIVE JUROR SIEMSEN: Yes.

13 MS. MARKS: Even if you believed all that
14 horrendous stuff that I told you to be true, you would be
15 able to acquit all three of these defendants, let them walk
16 free, if you found that the government didn't prove one of
17 the elements?

18 PROSPECTIVE JUROR SIEMSEN: I believe so.

19 MS. MARKS: You're sure?

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20 PROSPECTIVE JUROR SIEMSEN: I believe so, yes.

21 MS. MARKS: Thank you.

22 THE COURT: Mr. Karowsky, do you have any
23 questions?

24 MR. KAROWSKY: Just a couple brief ones.

25 Do you find the examples that Ms. Marks just gave

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1 you relative to the conduct against the children to be as
2 disgusting as the rest of us do?

3 PROSPECTIVE JUROR SIEMSEN: Yes, I do.

4 MR. KAROWSKY: This stuff isn't spoken in polite
5 company. We have to talk about it here. That is pretty
6 revolting stuff.

7 PROSPECTIVE JUROR SIEMSEN: Uh-huh.

8 MR. KAROWSKY: You follow the law. You are a law
9 abiding citizen. You were a State Farm agent for 35
10 years.

11 PROSPECTIVE JUROR SIEMSEN: Correct.

12 MR. KAROWSKY: Do you understand that this
13 process is called voir dire. That is French for to speak
14 the truth, to tell us the truth. You get a freebie on this
15 one. Even though sitting in front of a powerful person, a
16 federal judge appointed for life with huge powers, you can
17 tell us the truth and have a freebie on this one.

18 Do you understand that?

19 PROSPECTIVE JUROR SIEMSEN: Yes.

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20 MR. KAROWSKY: I would never sit in front of a
21 cop and tell him, you know, "I will try to follow this
22 speed limit if you let me go." But you can sit and tell us
23 that you can't follow the law and you get a freebie on
24 that.
25 Do understand that?

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1 PROSPECTIVE JUROR SIEMSEN: I believe I do.
2 MR. KAROWSKY: When I am sitting there and the
3 officer has my driver's license, he says, "I am going to
4 give you a warning; you are going to slow down."
5 And, you know, I say, "I think I'm going to try to
6 do that." There is no way I would have the guts to do
7 that. But you can today, if you really can't follow the
8 law, but you want to think you can.
9 Can you really follow the law that says even with
10 these disgusting, revolting acts, you will vote for not
11 guilty if a technicality requires you to do that?
12 PROSPECTIVE JUROR SIEMSEN: Yes.
13 THE COURT: Did we start with the government on
14 this one?
15 MS. WHITE: You did, Your Honor.
16 THE COURT: Then everybody has had an opportunity
17 to ask Mr. Siemsen questions.
18 Mr. Siemsen, I am going to ask you to step out that
19 door in the back for two minutes. I am going to talk to
20 the lawyers. We are going to let you know if we are going

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21 to want you to come back on the 15th or not.
22 Mr. Siemen s is outside the courtroom.
23 (Prospective Juror Siemen s departed courtroom.)
24 THE COURT: Any challenge for cause?
25 MS. WHITE: No, your Honor.

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1 MS. MARKS: Yes, Your Honor.
2 THE COURT: And your challenge is based on the
3 questionnaire?
4 MS. MARKS: Yes.
5 THE COURT: Is there anything else he said that
6 you think supports your challenge?
7 MS. MARKS: That he said here today?
8 THE COURT: Or in the questionnaire.
9 MS. MARKS: There are two things he said on the
10 questionnaire. One is his answer to question number 51.
11 Should I say what that is?
12 THE COURT: No. I'm looking at that one.
13 MS. MARKS: The other one is his answer to
14 question 77: Do you have any strong opinions regarding
15 these principles that would keep you from fulfilling the
16 responsibilities as a juror in a criminal trial?
17 He didn't check yes; and he didn't check no. He
18 wrote not sure.
19 THE COURT: You didn't ask him about that.
20 MS. MARKS: I did ask him.

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21 THE COURT: What did he say?
22 MS. MARKS: I don't know.
23 THE COURT: You are not sure.
24 MS. MARKS: But I did ask him about it.
25 THE COURT: Does anybody know what he said.

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1 MR. KAROWSKY: I think he said that he changes
2 his mind because of what he heard here in the court.
3 THE COURT: Right.
4 MS. MARKS: Right. It is not only his answers on
5 the questionnaire, but it is that they are different
6 today, and that I don't know anything he heard today,
7 especially from the defense attorneys, would logically not
8 have made him more open-minded. I think what he wrote in
9 the questionnaire is sufficient grounds for a challenge for
10 cause, especially question number 51.
11 THE COURT: Question number what?
12 MS. MARKS: Fifty-one.
13 Mr. Locke may have something to add.
14 THE COURT: Does anybody have anything to add?
15 MR. LOCKE: I just don't believe him when he say
16 he's changing his thing. I'm afraid that he is a volunteer
17 trying to get on the jury.
18 THE COURT: I would be concerned, too. But I
19 don't know if he is a volunteer trying to get on the jury.
20 Why would he have answered 51 in the way he did in the
21 first place? Because nothing has happened in the interim

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22 period of time, other than their coming to court the first
23 day, and the very brief discussions that he had at that
24 time, and their coming here today and the very brief voir
25 dire I had with him whether they could follow the law

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1 without regard to whether they thought it was good law or
2 bad law. This is one of the advantages of the individual
3 voir dire that you have asked me to do. He has not been
4 influenced or had a chance to be influenced by the
5 questions and answers addressed to the other jurors. I
6 would be concerned about what you say if he had sat here
7 all day and listened to the discussion that you have been
8 having with the other jurors and decided that he wanted to
9 be on this jury. So he was going to change his views. I
10 just don't know why he would not tell the truth here in
11 court.

12 MS. MARKS: Maybe he found out something about
13 the case.

14 MS. WHITE: You didn't ask.

15 THE COURT: Do you want to bring him back and ask
16 him if he knows anything about the case? I want to find
17 out if for some reason the jurors are talking to each other
18 or if somehow they learned something about the case that we
19 don't know.

20 (Prospective Juror Siensen entered courtroom.)

21 THE COURT: Mr. Siensen, before you -- you can

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22 stand there. I want to ask you, have you talked to any of
23 the other prospective jurors about this case at all since
24 we were here last time?

25 PROSPECTIVE JUROR SIEMSEN: No, I haven't.

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1 THE COURT: Like today, you haven't talked to
2 them about the case?

3 PROSPECTIVE JUROR SIEMSEN: No.

4 THE COURT: Have you learned anything about the
5 case, either from the Internet or your recollection or
6 talking to anybody since the last time you were here?

7 PROSPECTIVE JUROR SIEMSEN: No.

8 THE COURT: Thank you. Step outside again.

9 MS. WHITE: Your Honor, may I be heard?

10 THE COURT: Yes.

11 MS. WHITE: It strikes me as not an unusual thing
12 for some one to respond to question 51 as did Mr. Siemsen
13 do. I am extremely sensitive to the abuse of children in
14 most forms. That would be a normal response. I think at
15 the time, this was a month ago, he'd never been a position.
16 He was just being honest at that time. I did explain to
17 him, during my opportunity to speak with him, what his
18 obligation would be with respect to following the law and
19 the burden that the government has with respect to proving
20 all elements beyond a reasonable doubt. It was that basis
21 upon which he explained to Ms. Marks that he understood and
22 this is different today.

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23 So I think put in the context of what his obligation
24 would be, there is really nothing inconsistent with his
25 responses today from what he said earlier in his

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1 questionnaire.
2 THE COURT: I am looking for the part of his form
3 where he talked about previous jury experience. Has he had
4 experience before? No, he has not.
5 This is my take on it. I have listened to what he
6 had to say today, and he was asked several times in several
7 different ways whether he could follow the Court's
8 instructions and reach a verdict that was not based upon
9 emotion. And his answers were convincingly that he could.
10 The only thing that he's learned, in the meantime of any
11 significance, was the two or three questions that I asked
12 when they were in the box. And one of those had to do with
13 following the law as I give it to them, whether they would
14 agree with it or not.
15 A lot of people who haven't had jury experience may
16 come here thinking along the lines of what Ms. Sadler had
17 to say. That somehow they have the responsibility of
18 passing judgment, of exercising some independent
19 determination of what is good or not good and what ought to
20 happen or not ought to happen. And when they learn that
21 their job does not involve passing moral judgment, but
22 rather simply following the law and applying it to the

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23 facts as they find them, it makes their job a lot simpler.
24 If Mr. Siemsen had some idea that he was going to
25 have to play God, so to speak, and pass judgment on people,

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1 then I could see how he might say I have concern about my
2 ability to remain open-minded. And that might be the best
3 explanation that I can think of for the reason that he said
4 what he did.

5 With regard to question number 77, that is not a
6 good question and maybe it shouldn't have been asked. It
7 says: Do you have strong opinions regarding these
8 principles that would keep you from fulfilling your
9 responsibilities as a juror in a criminal trial? But we
10 don't tell them what their responsibility as a juror in a
11 criminal trial are. So he said he is not sure because he
12 didn't know his responsibility. That is consistent with
13 what I'm thinking he must have been concerned about in
14 answer to question number 51. If he thought his
15 responsibility as a juror in a criminal trial involved more
16 than applying the law as the judge gives it to him, but
17 rather thought that it was his responsibility to come up
18 with laws or to devise laws that he thought was fair, than
19 he might answer the question that way. But his answers
20 here in court have not given the Court any concern about
21 his ability to be fair and to divest himself of any emotion
22 or prejudice or passion in the process of arriving at the
23 verdict.

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24 So I'm going to deny the challenge for cause with
25 respect to Mr. Siemsen. I am going to observe here, that

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1 in case I forget about it, my decisions here so far have
2 resulted in only male jurors. I am not basing my decision
3 on the gender of the jurors. I am fully aware of the
4 court's responsibility to assure that neither challenge for
5 cause nor peremptory challenge are exercised on the basis
6 of gender.

7 I know the government, the first time that we talked
8 about the defendants waiving jury trial, said one of
9 reasons they wanted to have a jury trial was because the
10 victims like to look out into the jury and see a lot of
11 female faces. I am aware of that, but I am not taking it
12 into account one way or another. If this jury process
13 results in women on the jury, so be it. If it results in
14 no women on the jury, so be it. I'm making my decisions
15 based entirely upon the responses of the jury and not their
16 gender.

17 Bring in the next juror. Brought him back in.
18 Forget that I didn't.

19 (Prospective Juror Siemsen entered courtroom.)

20 THE COURT: Mr. Siemsen, I'm going to instruct
21 you to come back to court on January the 15th, which is
22 Tuesday, at 9:00 a.m. for further proceeding. In the
23 meantime, I will instruct you not to seek or obtain any

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24 information about the case, or anything that you may think
25 is an issue in the case from any source, and not to talk to

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1 anybody about the case.

2 The clerk is now going to come back to give you a
3 card with her telephone number on it in case you need to
4 get in touch with us before the 15th. And I will ask that
5 you give her a telephone number that she can reach you at
6 in case we need to talk to you before then.

7 PROSPECTIVE JUROR SIEMSEN: Thank you.

8 (Prospective Juror Siemen departed courtroom.)

9 THE COURT: Also, counsel, if you notice any
10 grounds for excusing any of those jurors, or in the next
11 batch, if you notice any grounds like the one with the
12 teacher, you might bring it to everybody's attention before
13 we ask a lot of questions. It will save some time.
14 Because I would have let her go on that ground alone
15 without the need to go into that other subject.

16 (Prospective Juror Cushman entered courtroom.)

17 THE COURT: Ms. Cushman, I am going to allow the
18 lawyers to ask you some questions. Now the first lawyer
19 who is going to address you is Mr. Locke.

20 MR. LOCKE: Good afternoon, Ms. Cushman.

21 PROSPECTIVE JUROR CUSHMAN: Hi.

22 MR. LOCKE: How are you?

23 PROSPECTIVE JUROR CUSHMAN: Very good. How are
24 you?

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25 MR. LOCKE: Good. Long day. Let me try to get

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1 straight to the point.
2 You are 22 years old; is that right?
3 PROSPECTIVE JUROR CUSHMAN: Uh-huh.
4 MR. LOCKE: Do you have brothers and sisters?
5 PROSPECTIVE JUROR CUSHMAN: I do.
6 MR. LOCKE: How many?
7 PROSPECTIVE JUROR CUSHMAN: One sister and two
8 brothers.
9 MR. LOCKE: How old are they?
10 PROSPECTIVE JUROR CUSHMAN: My sister is going to
11 be 26. My brother will be 24, and my youngest brother will
12 be 21.
13 MR. LOCKE: Any nieces and nephews?
14 PROSPECTIVE JUROR CUSHMAN: I have two nieces and
15 one nephew.
16 MR. LOCKE: They are obviously very young?
17 PROSPECTIVE JUROR CUSHMAN: Yes.
18 MR. LOCKE: You feel protective of them?
19 PROSPECTIVE JUROR CUSHMAN: Oh, yeah.
20 MR. LOCKE: You know the nature of the charges in
21 this case?
22 PROSPECTIVE JUROR CUSHMAN: I do.
23 MR. LOCKE: They involve allegations and evidence
24 in the case that will be -- evidence that some of the male

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25 defendants engaged in oral and anal and vaginal sex with

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1 children at the age of 14.
2 PROSPECTIVE JUROR CUSHMAN: Okay.
3 MR. LOCKE: Oral sex, even at the age of seven.
4 The testimony will be very graphic and involve testimony
5 about requiring seven-year-olds to lick the semen off a
6 penis and drink the semen out of a condom.
7 And knowing that, how does that make you feel, those
8 facts? What is the first word that comes to your mind?
9 PROSPECTIVE JUROR CUSHMAN: I am disgusted.
10 MR. LOCKE: In this case the government is
11 required to prove that a defendant transported the minors
12 across state lines with the intent that the minors engage
13 in illegal sex; in other words, have sex with an adult.
14 If, in this case, the evidence were clear to you
15 that the sex occurred, but there was no evidence that the
16 adult who did the transportation intended that to occur at
17 the time that he did the transportation -- you understand
18 what I am saying? That, say, he took the child from Texas
19 to California on June 1, and that somebody else assaulted
20 the children; somebody he knows assaulted the child on June
21 22, but there is no evidence that the one who did the
22 transportation intended that. Would you be able to acquit
23 that person, vote not guilty?
24 PROSPECTIVE JUROR CUSHMAN: Yeah.
25 MR. LOCKE: Would it be difficult for you?

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1 PROSPECTIVE JUROR CUSHMAN: It depends on the
2 circumstances.

3 MR. LOCKE: What do you mean by that?

4 PROSPECTIVE JUROR CUSHMAN: If they had no idea
5 that it was going on, then how are they supposed to stop
6 it?

7 MR. LOCKE: What about if the person who had sex
8 with the child was their good friend?

9 PROSPECTIVE JUROR CUSHMAN: That doesn't mean
10 that they know it is happening.

11 MR. LOCKE: What about if the reason for -- the
12 alleged reason for this occurring was because it was part
13 of a religious rite, and these two men were engaged in the
14 same religion? You would still vote not guilty?

15 THE COURT: This is same kind of problem we had
16 with one of these other witnesses, where you are creating
17 circumstantial evidence in your hypothetical. If you want
18 to get a clear answer, you are going to have different
19 hypotheticals.

20 MR. LOCKE: You said if the person had no idea
21 that that was going to happen, then you would vote not
22 guilty?

23 PROSPECTIVE JUROR CUSHMAN: Uh-huh.

24 MR. LOCKE: What if you thought that there was
25 some evidence that he might have known what was going to

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1 happen, but that the evidence wasn't evidence beyond a
2 reasonable doubt? The Judge at the end of the case will
3 instruct you that, in order to convict the defendants, you
4 have to find that the evidence as to everything was proved
5 beyond a reasonable doubt.

6 But now I'm asking you if there was a little bit of
7 evidence, but you still had a doubt as to whether or not
8 that that person knew, would you vote not guilty?

9 PROSPECTIVE JUROR CUSHMAN: Yeah. If I didn't
10 believe that he knew, if there is a little bit of evidence
11 that it could --

12 MR. LOCKE: What I am suggesting is evidence that
13 he might have known, but not beyond a reasonable doubt, not
14 conclusive.

15 THE COURT: Not conclusive is not the test.

16 MR. LOCKE: I know. It is the wrong word.

17 If the evidence wasn't beyond a reasonable doubt,
18 but there was evidence that he might have known, would the
19 fact the way you feel about kids and how disgusting this
20 was, would that make you want to find these people guilty?

21 PROSPECTIVE JUROR CUSHMAN: Yes.

22 MR. LOCKE: If the Judge said, "No, you've got to
23 put your feelings aside and just decide it based upon the
24 facts as you find them."

25 And then you say, "Well, I didn't find it beyond a

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1 reasonable doubt. "

2 Would you be able to acquit the defendants?

3 PROSPECTIVE JUROR CUSHMAN: If I didn't
4 believe -- it's kind of black and white to me. Either I'm
5 going to -- if there is evidence, if I think that is
6 enough, than I don't know.

7 MR. LOCKE: What I am asking you is because of
8 the nature of the case. Would you accept less evidence and
9 still find somebody guilty? In other words, evidence that
10 isn't beyond a reasonable doubt, but less evidence, a
11 little evidence would be enough for you to convict them?

12 PROSPECTIVE JUROR CUSHMAN: No.

13 MR. LOCKE: A little evidence.

14 PROSPECTIVE JUROR CUSHMAN: I guess it depends on
15 what it is. It would really --

16 MR. LOCKE: Say there is a little evidence that
17 he might have known, but it is not evidence that rises up
18 to where you can say, "Well, I know that he knew?"

19 THE COURT: Beyond a reasonable doubt.

20 MR. LOCKE: Beyond a reasonable doubt.

21 What we are afraid of is that people -- this is
22 disgusting stuff, and people love little kids, and people
23 want to protect little kids. But the law says that if the
24 government doesn't prove their case beyond a reasonable
25 doubt, then you have to vote not guilty. It has to be not

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1 guilty. But there is very real risk in this case that,
2 because of the way people feel about it, that they are
3 going to say, "Well, a little bit of evidence will be fine.
4 I will convict them."

5 What I am asking you: Is that how you feel?

6 PROSPECTIVE JUROR CUSHMAN: Yes.

7 THE COURT: Would you tell us how you feel? He
8 said is that you how you feel. You paraphrase, you tell us
9 how you feel about what he just said.

10 PROSPECTIVE JUROR CUSHMAN: If there is -- I
11 guess it is going to my opinion, correct?

12 THE COURT: Go ahead. He wants to know how you
13 feel.

14 PROSPECTIVE JUROR CUSHMAN: I know.

15 THE COURT: You said the way he described it is
16 how you feel. Put it in your own words.

17 PROSPECTIVE JUROR CUSHMAN: He is asking me if
18 there is a little bit of evidence, where it is not beyond a
19 reasonable, if I could acquit them and say they are not
20 guilty.

21 THE COURT: And your answer is?

22 PROSPECTIVE JUROR CUSHMAN: No.

23 THE COURT: You couldn't?

24 PROSPECTIVE JUROR CUSHMAN: I don't think so,
25 no.

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1 THE COURT: Explain why.

2 PROSPECTIVE JUROR CUSHMAN: If there is any
3 evidence at all that would -- it would be hard to look
4 over.

5 THE COURT: That is because of the seriousness of
6 the crime?

7 PROSPECTIVE JUROR CUSHMAN: Yes.

8 THE COURT: And the nature of the evidence that
9 Mr. Locke has suggested you might hear? Kind of kinky sex.
10 Is that the reason that you are not going to require the
11 government to prove beyond a reasonable doubt?

12 PROSPECTIVE JUROR CUSHMAN: What is not beyond a
13 reasonable doubt?

14 THE COURT: I will explain that, if you are
15 selected as a juror. Just a doubt based upon reason
16 doesn't mean beyond all possible doubt; it means beyond a
17 reasonable doubt.

18 PROSPECTIVE JUROR CUSHMAN: I don't think so.

19 THE COURT: Let's say you had two cases. One is
20 a minor case, spitting on the street.

21 PROSPECTIVE JUROR CUSHMAN: Uh-huh.

22 THE COURT: A criminal case. So the government
23 has to prove beyond a reasonable doubt. You have another
24 case which is serious, disgusting sexual acts against
25 minors. Are you going to require the government to prove

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1 something less than beyond a reasonable doubt when the
2 charges are so serious? Or are you going to make the
3 government prove the same thing, same standard in both
4 those cases.

5 PROSPECTIVE JUROR CUSHMAN: It would have to be
6 the same standard.

7 THE COURT: Do you think that is consistent with
8 the answer you gave Mr. Locke?

9 PROSPECTIVE JUROR CUSHMAN: No.

10 THE COURT: Which is it now? This is the first
11 time you're coming here. You didn't know you were going to
12 be asked these questions?

13 PROSPECTIVE JUROR CUSHMAN: No.

14 THE COURT: It requires some soul searching.
15 This is the time we need to know. If you don't tell us
16 now, it could be too late later when you say, "I answered
17 those questions wrong." So now you think about it.

18 What do you think? What is your answer?

19 PROSPECTIVE JUROR CUSHMAN: When he is saying
20 there could be some evidence, it is just -- I just think it
21 would be based on how serious you think that evidence is.

22 THE COURT: How strong you think the evidence is?

23 PROSPECTIVE JUROR CUSHMAN: Yeah.

24 THE COURT: But is it based on how serious you
25 think the charge is?

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1 PROSPECTIVE JUROR CUSHMAN: No.

2 THE COURT: It's based on how strong you think
3 the evidence is.

4 PROSPECTIVE JUROR CUSHMAN: Yes.

5 THE COURT: Whether you think it rises to the
6 level of proof beyond a reasonable doubt?

7 PROSPECTIVE JUROR CUSHMAN: Yes.

8 THE COURT: Did you ask her about the elements
9 yet? You can ask her about the element.

10 MR. LOCKE: At this point in the day, I don't
11 know, Your Honor.

12 THE COURT: We've been questioning so many other
13 jurors that sometimes it is hard for both of us to remember
14 what questions have already been asked.

15 Go ahead and proceed.

16 MR. LOCKE: If there is a case where it's -- I
17 think I have asked her, Your Honor -- where it is clear
18 that the abuse occurred, but there is very little evidence
19 that the defendant, who transported the child to the next
20 state, intended that the sex occur. There is some
21 evidence, but not very much. It is less than beyond a
22 reasonable doubt. But it is clear that the sex occurred,
23 and the sex is as horrific as I described it to a very
24 young girl.

25 Would you tend to find that person guilty because of

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1 the way you feel about these particular crimes and the harm
2 to the children?

3 PROSPECTIVE JUROR CUSHMAN: Would I?

4 MR. LOCKE: Would you tend to find those people
5 guilty even though there was little evidence of intent?

6 PROSPECTIVE JUROR CUSHMAN: Little evidence of
7 intent?

8 MR. LOCKE: Right. In other words, it is enough
9 evidence to say, well, they might have known, but I have a
10 reasonable doubt he may not have known. I could reasonably
11 conclude that he may not have known.

12 PROSPECTIVE JUROR CUSHMAN: Then he wouldn't be
13 guilty.

14 MR. LOCKE: Then you would find him not guilty?

15 PROSPECTIVE JUROR CUSHMAN: Yeah, if he
16 wasn't.

17 MR. LOCKE: Even if the sex occurred?

18 PROSPECTIVE JUROR CUSHMAN: He didn't know that
19 it is going on.

20 MR. LOCKE: Well, there was some evidence that he
21 knew what was going on.

22 PROSPECTIVE JUROR CUSHMAN: There was little
23 evidence you said, and if I would be able to find him not
24 guilty if there was very little evidence?

25 MR. LOCK: Uh-huh.

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1 PROSPECTIVE JUROR CUSHMAN: Yeah, if there
2 was.

3 MR. LOCKE: Would you, because of the way you
4 feel about this case, would you be inclined to find him
5 guilty with more evidence but evidence that is less than
6 beyond a reasonable doubt? I am asking how -- the way you
7 feel, when you get in there would you say, "Well, it's not
8 beyond a reasonable doubt, but I think he's a bad person,
9 so I am going to find him guilty"?

10 PROSPECTIVE JUROR CUSHMAN: No.

11 MR. LOCKE: No?

12 PROSPECTIVE JUROR CUSHMAN: No.

13 MR. LOCKE: Thank you for answering the
14 questions.

15 PROSPECTIVE JUROR CUSHMAN: You're welcome.

16 THE COURT: Ms. Marks?

17 MS. MARKS: No.

18 THE COURT: Mr. Karowsky?

19 MR. KAROWSKY: It's late. It's been a long day
20 for all of us. Let me ask you a few more questions. I
21 think what we are really trying to get at is this. This is
22 going to be a trial with some very graphic evidence. And
23 please forgive me; I am going to tell you what we
24 anticipate, hypothetically, is going to be the evidence.
25 Okay? That there were a number of children in both

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1 families and that, as part of these religious practices
2 that were sort of put together by the males, they forced
3 their own daughters to start orally copulating them as
4 young as age seven. That went on for years and years and
5 years. As part of that oral copulation these seven-,
6 eight-, nine-, ten-year-old girls were required to do this
7 to their fathers, almost on a daily basis. Being told to
8 lick the ejaculate from their own father's penis. Being
9 told and required to swallow the ejaculate from condoms
10 that were used. Having their feces measured to see if
11 their anus was ready to have the father insert his penis
12 into it. And then children from one family were sent to
13 another family, and those children were then
14 ritualistically abused for years.

15 That is the minimal nature of the graphic evidence
16 that you are going to hear 22-, 23-year-old young women,
17 who were victimized for years, close to a decade, testify
18 to.

19 Does that make you upset?

20 PROSPECTIVE JUROR CUSHMAN: (Witness nods head.)

21 MR. KAROWSKY: So upset that you can't -- can you
22 say yes? Is that emotionally upsetting to you? It is
23 emotionally upsetting to all of us.

24 This young lady is shaking her head, Your Honor.

25 THE COURT: The record will reflect she is

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1 noddin g her head to each of those questions --

2 MR. KAROWSKY: I understand.

3 THE COURT: -- in the affirmative to all the
4 questions.

5 MR. KAROWSKY: You also look like you are going
6 to cry. I'm sorry. I don't mean to do this.

7 What we are trying to do is tell you what is going
8 to happen, so that when you are sitting here you don't say,
9 "Boy, did I make a mistake sitting on this one. This was
10 not the one for me."

11 May the record reflect this young lady is crying,
12 Your Honor.

13 THE COURT: Yes.

14 Take a minute here, Ms. Cushman, and then I want to
15 ask you a question.

16 Some cases aren't the right cases for even the
17 fairest jurors to sit on. What Mr. Karowsky has just done
18 is to give you an idea what you might be subjected to if
19 you are required to hear the evidence in this case. It is
20 not because we don't think you are fair. It is because we
21 want to know whether you can stand to sit through it. And
22 you are shaking your head that you can't.

23 Any objection to excusing her?

24 MS. WHITE: No.

25 MR. KAROWSKY: Yes, we agree, Your Honor.

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1 THE COURT: Thank you, Ms. Cushman. Hate to put
2 you through it. We need to know. You are excused. Thank
3 you.

4 PROSPECTIVE JUROR CUSHMAN: Thank you.

5 THE COURT: Leave this way. If you leave that
6 way, it won't get you to the hall.

7 (Prospective Juror Cushman departed courtroom.)

8 (Prospective Juror Wells entered courtroom.)

9 THE COURT: Ms. Wells, didn't think we were going
10 to get to you today? Thank you for waiting. You are the
11 next to last. You got one more sitting in that room; I
12 think then we will be finished for the day. I am going to
13 let the lawyers ask you some questions, and I don't think
14 it will take too long. We will begin with the attorney for
15 the government, Ms. White.

16 MS. WHITE: Thanks for being so patient. I want
17 to get to one part of your questionnaire that I think may
18 settle things. In your physical health and disabilities
19 section you indicated in response to the question, "Do you
20 have any health problem that would make it difficult or
21 impossible for you serve on jury at this time," you
22 indicated you have a tendency to forget details given you
23 in recent instructions and you're easily distracted.

24 Can you share a little bit what it was you meant by
25 that?

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1 PROSPECTIVE JUROR WELLS: I'm getting old.

2 MS WHITE: So am I.

3 PROSPECTIVE JUROR WELLS: Basically, I have a
4 hard time sometimes remembering a lot of details,
5 particularly over time, and that type of thing. I mean, I
6 can be -- well, to give you an instance. Coming to court,
7 I couldn't remember what floor the court was on. I had my
8 husband drive me here because I can't remember how to get
9 here. That type of thing. It's just trying to remember a
10 lot of details. Particularly, if I am under pressure, it
11 is hard to remember. I have a history of Alzheimer's in my
12 family.

13 THE COURT: Where do you live?

14 PROSPECTIVE JUROR WELLS: Paradise.

15 THE COURT: When you did this questionnaire, I
16 notice it says, the third question, where were you born;
17 and the next question, what city, what part of Sacramento
18 do you live in, she answered correctly. She said she
19 didn't live in Sacramento. You live in Paradise?

20 PROSPECTIVE JUROR WELLS: Yes.

21 THE COURT: Your husband drove you down here?

22 PROSPECTIVE JUROR WELLS: Yes.

23 THE COURT: If you're selected as a juror, would
24 he drive you down every day or would you stay down here?

25 PROSPECTIVE JUROR WELLS: No. He just,

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1 fortunately, was able to get off work to be able to bring
2 me down for this.

3 THE COURT: What would happen if you're selected
4 as a juror?

5 PROSPECTIVE JUROR WELLS: If I am selected as a
6 juror, I'd probably have to get lost in driving down every
7 day.

8 THE COURT: After the second or third day you
9 wouldn't get lost, but that is long ways to come down,
10 right?

11 PROSPECTIVE JUROR WELLS: Yes.

12 THE COURT: How long does it take you to get from
13 Paradise?

14 PROSPECTIVE JUROR WELLS: For the time the court
15 convenes and dismisses, with the traffic it takes me about
16 three hours. Took me three hours today to get here.

17 THE COURT: Did they explain, if you're selected
18 as a juror, you would be allowed -- you receive some money
19 to stay over?

20 PROSPECTIVE JUROR WELLS: Yes, yes.

21 THE COURT: Would you be able to do that or would
22 you still commute?

23 PROSPECTIVE JUROR WELLS: I don't know which I
24 would choose to do at this point in time. I don't know. I
25 don't know Sacramento. I wouldn't want to stay here.

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1 THE COURT: You are not that old. I am looking

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2 at the date of birth. You are not that old. Do you think
3 that your memory problem may be early onset of some
4 dementia, or do you think it is the normal aging process?

5 PROSPECTIVE JUROR WELLS: I really don't know. I
6 forget more than I think I should be forgetting, a lot, and
7 stuff like that. I don't really know. I know my mother
8 was stricken with Alzheimer's at an early age. So I really
9 don't know.

10 MS. WHITE: This trial is going to last anywhere
11 from four to six weeks, a lot of witnesses and a lot of
12 testimony. I just wanted to ask you, be very candid with
13 us, how you feel you are going to be able to handle that.

14 PROSPECTIVE JUROR WELLS: That is one of the
15 reasons I put that down for that question, because I don't
16 know if I would be able to remember all the details of
17 everything presented.

18 MS. WHITE: Your Honor -- I thank you for your
19 candor. I think the parties are willing to stipulate.

20 THE COURT: Everybody agrees that Ms. Wells may
21 be excused?

22 MR. LOCKE: Yes.

23 MR. KAROWSKY: Yes.

24 MS. MARKS: Yes.

25 MS. WHITE: Yes.

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1 THE COURT: You are excused. Thank you for

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2 coming. You can leave out the back door; it would be
3 easier. Did you leave anything in the jury room?
4 PROSPECTIVE JUROR WELLS: That one?
5 THE COURT: Yes. Is your husband here?
6 PROSPECTIVE JUROR WELLS: He's downstairs
7 somewhere.
8 (Prospective Juror Wells departed courtroom.)
9 (Prospective Juror Konvalin entered courtroom.)
10 THE COURT: Mr. Konvalin, you are the last one
11 today. So I am going to allow one of the attorneys to ask
12 you some questions. The first attorney who will be
13 addressing you is Mr. Locke, who represents Mr. Harrod, one
14 of the defendants.
15 MR. LOCKE: Good afternoon.
16 PROSPECTIVE JUROR KONVALIN: Good afternoon.
17 MR. LOCKE: I'm going to go right to the
18 questionnaire that you filled out for us. And you answered
19 question number 51, which asked if there was any reason --
20 "Is there anything about the nature of the allegations in
21 this case that would affect your ability to be fair, to be
22 a fair and impartial juror?" And you said, "I'm not sure.
23 It is an issue I do not like."
24 PROSPECTIVE JUROR KONVALIN: That's true.
25 MR. LOCKE: The nature of the charges in this

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1 case, which are basically child abuse and molesting
2 children by requiring them to have sex with adults, is an

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3 issue that upsets you?

4 PROSPECTIVE JUROR KONVALIN: It does; it really
5 does.

6 MR. LOCKE: As a result of that, you are not sure
7 that you would be able to be an impartial juror in the
8 case?

9 PROSPECTIVE JUROR KONVALIN: I think it is a
10 subject that I don't like from the standpoint of discussing
11 or being involved with, in a sense that I would have to
12 think about it. To be honest, I don't think it would
13 prevent me from trying to be a fair and honest juror. It's
14 just a subject I really don't care for.

15 MR. LOCKE: Right. Here's the thing, we are
16 trying to find people that would guarantee us that they
17 would be a fair and impartial juror. And when people say,
18 "Well, I can try," that is not the same as, "I can
19 guarantee it."

20 You're saying you'd try, correct, but you can't
21 guarantee it?

22 PROSPECTIVE JUROR KONVALIN: By profession I am
23 an analyst, so I would be able to take a look at all the
24 facts and information and try to come to an impartial
25 decision on that. Children affect all of us. So I have to

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1 be honest and say I would be impacted by it.

2 MR. LOCKE: You would be impacted. Would you be

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3 impacted in such a way that, if the evidence was close,
4 then you would be more inclined to find people guilty,
5 rather than to find them not guilty?

6 PROSPECTIVE JUROR KONVALIN: I will put it this
7 way: I will look at what is presented as facts to me and,
8 based on my best ability, I would try to make a choice
9 based on those facts. The fact that we're dealing with
10 child abuse and whatnot, I think I can probably be
11 impartial, to be honest. But like you said, that is a
12 subject that all of us have to deal with.

13 MR. LOCKE: What you're saying is that you can't
14 guarantee that you would be impartial; is that correct?

15 PROSPECTIVE JUROR KONVALIN: Well, that is
16 correct.

17 MR. LOCKE: I mean it's because there are some
18 things that people believe in or feel about and you say,
19 "Well, I don't like that. I hate that kind. I am so --
20 that conduct is so abhorrent that if anybody engaged in it
21 or came close to engaging in it, I would be inclined to
22 finish them." Is that an accurate statement of where you
23 are?

24 PROSPECTIVE JUROR KONVALIN: Well, I do have
25 strong feelings in that area, yes.

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1 MR. LOCKE: And you also checked the answer to
2 the question that you would give greater weight to police
3 officers who would testify?

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4 PROSPECTIVE JUROR KONVALIN: I don't think I did.
5 I don't remember. I don't necessarily think I did.
6 MR. LOCKE: Would you tend to give greater weight
7 to the testimony of a law enforcement officer just because
8 she is an officer? You checked yes.
9 PROSPECTIVE JUROR KONVALIN: I did check yes?
10 MR. LOCKE: Yes.
11 PROSPECTIVE JUROR KONVALIN: I don't recall that.
12 Obviously, at the time I must have felt that that was
13 true.
14 MR. LOCKE: You have relatives who work at
15 Susanville jail or friends?
16 PROSPECTIVE JUROR KONVALIN: I have a niece and
17 her husband, they both work at the county jail up in
18 Susanville. Actually, not now. They have since
19 transferred over to Idaho. They work there at Idaho State
20 Penitentiary.
21 MR. LOCKE: Is that possibly why you said you
22 would give greater weight to law enforcement people?
23 PROSPECTIVE JUROR KONVALIN: I don't remember
24 checking that, to be honest.
25 MR. LOCKE: Let me give you an example, a

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1 hypothetical. If there was testimony that -- well, let me
2 say the government is required to prove in this case that a
3 defendant transported a minor across state lines with the

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4 intent that the minor engage in sex when they got to the
5 new state. If the evidence was clear that the minor was
6 required to have sex with an adult when she got to the new
7 state, but the evidence was -- there was no evidence that
8 the person who transported her there intended that to
9 occur, would you have trouble acquitting that person,
10 finding them not guilty?

11 PROSPECTIVE JUROR KONVALIN: Based on the facts
12 given, I don't see how I would have any trouble
13 distinguishing between the two.

14 MR. LOCKE: What if there was a little bit of
15 evidence that the individual who did the transportation
16 knew what was going to happen, but the Judge says, "Well,
17 you can only find them guilty if you find that that
18 defendant intended that, you got to find that from -- you
19 got to find the evidence was beyond a reasonable doubt."

20 Do you understand what "beyond a reasonable doubt
21 is"?

22 PROSPECTIVE JUROR KONVALIN: I think so.

23 MR. LOCKE: You conclude, well, that the evidence
24 isn't beyond a reasonable doubt, but there is a little bit
25 of evidence that he might have known. Would you been

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1 inclined to find that person guilty then?

2 PROSPECTIVE JUROR KONVALIN: Not necessarily. I
3 am sure the Judge will have given us instructions and
4 clarifications. I would follow whatever the Judge gives to

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5 us to debate on. I can distinguish different levels, if
6 that is what you are asking me.

7 MR. LOCKE: Given your feelings about the
8 charges, would you be inclined, you think -- and I want
9 your honest answer -- that you would give the government a
10 break and find people guilty, even though the evidence
11 didn't get to beyond a reasonable doubt?

12 PROSPECTIVE JUROR KONVALIN: I don't see -- I
13 will say no. In the sense that I would consider all the
14 evidence, and I would not give the state or policeman more
15 credence or weight than not. Does that answer your
16 question?

17 MR. LOCKE: Not exactly. Because what I am
18 asking, let's say the evidence is just equal on the
19 question of intent. You say, you look at it, you say,
20 "Well, he could have known, but maybe he didn't know." But
21 the crime is so abhorrent, and you've said that you find it
22 abhorrent, and you are not sure that it wouldn't affect
23 you. I am asking, if it's like, would you be, "ell, I'll
24 find him guilty because he could have?" That is what I am
25 asking. Would you react that way?

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1 PROSPECTIVE JUROR KONVALIN: I don't believe I
2 would, to be honest.

3 MR. LOCKE: Can you guarantee that you wouldn't?

4 PROSPECTIVE JUROR KONVALIN: At this point I

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5 could guarantee it, but, again, the case facts would help
6 determine that decision.

7 MR. LOCKE: What you are telling me, even though
8 you told me previously that it would affect you and that
9 you couldn't guarantee that it wouldn't affect you, you are
10 now telling me that you can guarantee the way you feel
11 about it won't affect how you make the decision?

12 PROSPECTIVE JUROR KONVALIN: If your question is
13 can I make a decision whether I should give more weight to
14 the government versus the individual, when you have a fact
15 which is really imbalanced, I can make that decision and
16 say, "No, I won't give more weight to the government versus
17 the individual." But I am going to depend on the Judge to
18 kind of give me guidance there.

19 MR. LOCKE: The Judge can you tell you the law,
20 but you are the one that has to apply the facts to the law.
21 The Judge is going to say, "You have to find -- in order to
22 find these people guilty, you have to find each element was
23 proved beyond a reasonable doubt." And what I am asking,
24 given how you feel about this, these offenses, these child
25 molestations, and there is going to be graphic gross

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1 evidence of requiring a young child to swallow the semen
2 out of a condom, about having a seven-year-old lick her
3 father's penis clean. When you hear that, are you going to
4 be able to say, "Well, the evidence is they didn't prove it
5 beyond a reasonable doubt, so I'm going to vote not guilty.

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6 Let these defendants go free"? Are you going to be able to
7 do that?

8 PROSPECTIVE JUROR KONVALIN: I want to say yes,
9 but I don't know that I can.

10 MR. LOCKE: And that is your truthful answer,
11 right? I appreciate that. Thank you very much.

12 THE COURT: Ms. Marks, any questions?

13 MS. MARKS: No, thank you.

14 THE COURT: Mr. Karowsky?

15 MR. KAROWSKY: Judge, I am going to ask a couple.

16 You started out by saying that these kinds of facts
17 upset you, correct? And they upset us. They are going to
18 be really very graphic facts. Mr. Locke was talking about
19 a couple of instances. We are talking about three, four,
20 five children, girls, starting at age seven with both men,
21 being required to give oral sex to their fathers on almost
22 a daily basis for up to ten years. Being required to
23 literally lick their father's penis clean of the ejaculate,
24 swallow the ejaculate from condoms. Go through ritualistic
25 ceremonies involving other children and parents. Having

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1 feces measured to see if their anus was ready to have the
2 penis inserted into their anus.

3 None of us want to listen to this. You told us that
4 you don't want to be involved with this to start with,
5 didn't you?

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6 PROSPECTIVE JUROR KONVALIN: It's something that
7 I don't want to be involved with.
8 MR. KAROWSKY: Really, to the point that it is
9 going to be pushing you to a level you don't want to be at.
10 You don't have to be here. Do you understand, do you
11 understand that you can say, "I can be fair in every other
12 aspect of life, but this one is just a little bit more than
13 I choose to be involved with"?
14 THE COURT: Wait, wait, no. You can't get out of
15 jury duty because you choose not to be involved. And it is
16 not right to tell a juror he can get out jury duty --
17 MR. KAROWSKY: I misspoke.
18 THE COURT: -- by saying certain things.
19 MR. KAROWSKY: I misspoke.
20 You said also that you do not want to think about
21 these kinds of things?
22 PROSPECTIVE JUROR KONVALIN: Correct. No one
23 should have to think about these things. We all prefer
24 they not happen in life, but they obviously do.
25 MR. KAROWSKY: Not only are you going to have to

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1 think about them for six to eight weeks, but you are going
2 to have sit in the jury box and listen to 20-, 21-, 22-,
3 23-year-old girls testify to everything that I have just
4 said and more. In other words, you are not only going to
5 be thinking about it, you are going to be living it. Is
6 that something that you're capable of doing?

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7 PROSPECTIVE JUROR KONVALIN: If you select me as
8 juror, sure I will.
9 MR. KAROWSKY: You will?
10 I have nothing else, Your Honor.
11 THE COURT: Ms. Endrizzi, the government
12 attorney, is now going to ask you some questions.
13 MS. ENDRIZZI: Afternoon.
14 PROSPECTIVE JUROR KONVALIN: Good afternoon.
15 MS. ENDRIZZI: Has Mr. Locke and Mr. Karowsky
16 thoroughly grossed you out?
17 PROSPECTIVE JUROR KONVALIN: They certainly tried
18 their best.
19 MS. ENDRIZZI: If I were to tell you that this
20 trial is about horrific serial murders, would that be an
21 issue that you did not like to hear about?
22 PROSPECTIVE JUROR KONVALIN: Don't like to hear
23 about any violent crime or anything of that nature.
24 MS. ENDRIZZI: You did touch on some things that
25 are important. And one of the sections in here says

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1 responsibilities. You are a senior computer systems
2 analyst for the Franchise Tax Board.
3 PROSPECTIVE JUROR KONVALIN: Correct.
4 MS. ENDRIZZI: Pretty detailed work?
5 PROSPECTIVE JUROR KONVALIN: Yes.
6 MS. ENDRIZZI: You have been with the Franchise

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7 Tax Board 35 years?
8 PROSPECTIVE JUROR KONVALIN: Correct.
9 MS. ENDRIZZI: I can't think of a more detailed
10 kind of life. What you are going to be asked to do, and
11 you've been picked for two juries; isn't that correct?
12 PROSPECTIVE JUROR KONVALIN: Correct.
13 MS. ENDRIZZI: One was a criminal jury?
14 PROSPECTIVE JUROR KONVALIN: Correct.
15 MS. ENDRIZZI: What you will hear, and might have
16 heard, is that the government bears the complete burden of
17 proving guilt on all elements beyond a reasonable doubt.
18 PROSPECTIVE JUROR KONVALIN: Correct.
19 MS. ENDRIZZI: In a sense, you're a systems
20 analyst, and like you said, you analyze facts?
21 PROSPECTIVE JUROR KONVALIN: That is correct.
22 MS. ENDRIZZI: That is what we are asking you to
23 be able to do here. Now can you tell me, despite the fact
24 that the facts will be disturbing, they are what they are,
25 can you look at each element of the crime and, if the

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1 government has proved every single element beyond a
2 reasonable doubt, can you find the defendant guilty?
3 PROSPECTIVE JUROR KONVALIN: I believe I could,
4 yes.
5 MS. ENDRIZZI: Let me tell you. In a sense we
6 need to really figure this out. If we prove all the
7 elements beyond a reasonable doubt, can you find the person

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8 guilty?

9 PROSPECTIVE JUROR KONVALIN: Yes.

10 MS. ENDRIZZI: If the government has proved three
11 of the elements beyond a reasonable doubt, but hasn't
12 proved the fourth one, to your mind, beyond a reasonable
13 doubt, no matter how close or far the evidence is, if we
14 have not proven that element beyond a reasonable doubt to
15 your mind, you would have to find the defendant not guilty
16 and acquit. Could you do that?

17 PROSPECTIVE JUROR KONVALIN: That is my
18 understanding, yes.

19 MS. ENDRIZZI: Even if the facts are as Mr. Locke
20 and Mr. Karowsky have intimated they will be. Drinking
21 semen, oral sex, things like that. If we haven't met our
22 burden, and met every single element, could you acquit the
23 defendants?

24 PROSPECTIVE JUROR KONVALIN: Yes.

25 MS. ENDRIZZI: Nothing further, Your Honor.

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1 THE COURT: Mr. Konvalin, I need to know whether
2 you are the right juror to stay on this panel. And I have
3 gotten somewhat conflicting signals from you here. And it
4 is nothing -- it is not failure to say this is not the
5 right kind of a case for you. But on the one hand, I have
6 heard you say what you just said to Ms. Endrizzi. If the
7 government didn't prove all elements beyond a reasonable

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8 doubt, you would have no hesitancy to find a defendant not
9 guilty. But I did hear you say in response to some other
10 questions earlier, such things as you don't know whether
11 you could be fair, you can't guarantee you can be
12 impartial. And at one point you said if the evidence came
13 even close to some of the things that you have heard, that
14 you would be inclined to find the defendant guilty.

15 So I am getting conflicting signals. I need to
16 know, really, whether you are the right person to keep on
17 this jury in this case. I want to ask you one question
18 that might help you answer that for me. If you were any of
19 the defendants in this case charged with these crimes, or
20 if you were the government attorney charged with the
21 responsibility of presenting the case on behalf of the
22 government, would you be satisfied to have your case heard
23 by 12 jurors who were in the frame of mind that you
24 presently have? And only you know what your state of mind
25 is.

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1 PROSPECTIVE JUROR KONVALIN: Maybe help clarify a
2 little bit. I don't like the subject matter at all,
3 because it really does upset me. Whether I could be a fair
4 juror, I think I can. I think I can listen to the facts
5 and, based on the evidence given, I can probably make a
6 very clear decision based on the evidence given.

7 THE COURT: If you were on either side of this
8 case, would you be satisfied to have the case heard by 12

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9 jurors who were in your state of mind?
10 PROSPECTIVE JUROR KONVALIN: In my mind, yes.
11 THE COURT: No question about it?
12 PROSPECTIVE JUROR KONVALIN: No. I just don't
13 want you to think I want to get out of this for whatever
14 reason. I want to be a fair and honest person.
15 THE COURT: I want you to understand that every
16 one of us, myself included, would want to do something
17 else. So you are not the only one.
18 If you will step outside, we will let you know in
19 just a couple of minutes whether you are to come back on
20 the 15th.
21 (Prospective Juror Konvalin departed courtroom.)
22 THE COURT: Is there a challenge for cause?
23 MR. LOCKE: Yes, your Honor.
24 THE COURT: Would you state the reason for the
25 challenge, please?

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1 MR. LOCKE: The last three things that he said in
2 the answer to your question was, "I don't like these facts,
3 but I think I can, and I can probably be fair and
4 impartial."
5 We shouldn't be saddled with a jury of people who
6 think they can be fair or are going to try to be fair.
7 What that says is this stuff upsets me, and I have doubt as
8 to whether I can be fair, and so I am hedging by saying

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9 that I can be fair, or I can probably be fair. It is like
10 somebody, you have said before, well, it is 90 percent
11 chance I can be fair. We ought not to be stuck with those
12 people. We need people who say, "I can put this aside. It
13 will not affect me. I can guarantee you that."

14 THE COURT: Well, this is another difficult
15 decision. It is only difficult for me because of the
16 mindset that I have explained to you earlier that I come
17 here with. I want to call the close cases of these jurors
18 in favor of excusing them, because I want to resolve any
19 doubt that I have about whether they can be fair in favor
20 of excluding them from this jury.

21 That is why I put the last question that I did to
22 Mr. Konvalin, because I was getting some mixed signals.
23 And depending on how he answered that question, I could
24 have gone either way. He is an analyst. He thinks in
25 terms of probabilities and numbers. To me when he says he

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1 probably can be fair and impartial, that is the best answer
2 you can expect out of an analyst. He is always dealing
3 with probabilities and never excludes the possibility of
4 anything. To me that makes a good juror.

5 I know this isn't the test that I am supposed to
6 apply, but I have seen a number of trials and I have been
7 on both sides of the table as a lawyer. This is a juror
8 that I would keep if I were either a prosecutor or a
9 defense attorney. This is not the test, but this is not a

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10 juror that I would exercise a peremptory challenge to
11 excuse, if I were the lawyer on either side of this case.
12 So even though I came out here with the idea of
13 exercising the close calls in favor of excluding jurors, I
14 think it would be wrong, and it would be a poor judgment on
15 my part to excuse Mr. Konvalin. I think, from everything
16 he has told us, he will be a fair juror in the case. He
17 doesn't like this kind of case, but you are not supposed to
18 like crimes. As I told one of the other jurors, Congress
19 presumably speaks for the people when they make something a
20 crime. It is usually because it repugnant to most of the
21 people. This has to be a crime that is more repugnant than
22 most crimes to most people. But still the fact that he's
23 telling me he doesn't want to sit on this case and doesn't
24 like to hear about this kind of conduct doesn't cause me so
25 much concern as to excuse him from the jury.

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1 So I am going to deny that challenge for cause.
2 Bring Mr. Konvalin in and I will tell him to come
3 back on the 15th.
4 (Prospective Juror Konvalin entered courtroom.)
5 THE COURT: Mr. Konvalin, I am going to instruct
6 you to come back on January the 15th at 9:00 a.m. for
7 further proceedings. In the meantime, I am instructing you
8 also not to seek or obtain any information about this case,
9 or what you may think are any of the issues in this case,

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10 from any source. Not to discuss the case with anyone.

11 The clerk is going to give you a card with her
12 telephone number on it. If you need no get in touch with
13 us, you can call that number. She would also like a
14 telephone number from you where we can reach you, if we
15 need to talk to you before the 15th.

16 PROSPECTIVE JUROR KONVALIN: Is that all?

17 THE COURT: Yes. Thank you. That is all for
18 today.

19 (Prospective Juror Konvalin departed courtroom.)

20 THE COURT: Counsel, it is now after 6:00 p.m.
21 And although we came close to doing this in the period of
22 time that we set aside for it, we didn't come close enough.
23 There was one juror who is not here, and there were two
24 others that you excused before we got to them. Had that
25 one juror been here, or had you not excused the others, we

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1 would not have been able to complete the voir dire of these
2 20 jurors today.

3 Do you want me to set an informal time limitation on
4 your voir dire of each juror so that -- although you are
5 not bound by it, it will remind you and you will make a
6 good faith effort to keep within a time limitation?

7 MS. WHITE: Your Honor, I think that would be a
8 good idea. It might encourage all counsel to fine-tune
9 their line of questions so there is not a lot of
10 repetition.

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11 THE COURT: There hasn't been a lot of
12 repetition. What has happened is that there has not been a
13 lot of questioning of those jurors who haven't made some
14 suggestion in their questionnaires that causes the
15 questions to be asked. But there is a disproportionate
16 number of questions, for example, to Mr. Sherwood, that
17 took up all the time. And I just don't know from day to
18 day which jurors might cause a concern.

19 MR. KAROWSKY: Your Honor, if I could weigh in
20 briefly. I think it is interesting we have eight white
21 males who are left, some of whom had some major issues.
22 And I think, not that I am giving a psychiatric or
23 psychological evaluation, but it seems white males,
24 regardless of what their feelings may be, are much more
25 reluctant than the females to convey their feelings.

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1 THE COURT: Let me chime in on this one. The
2 Supreme Court and the other appellate courts would chew you
3 out from top to bottom for that comment that you just made,
4 which was not only sexist but racist. It stereotyped white
5 males in a way that was different from females or persons
6 of other races. That is something that courts are not
7 supposed to condone.

8 Having said that, I will tell you that I have been
9 very mindful, as I explained, to not just listen to the
10 words that these people said, but to try to read between

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11 the lines and to discern what they were really thinking.
12 To the extent that a middle-aged male may not breakdown and
13 become incoherent to the same extent that a 22-year-old
14 female did, I tried to look at them and notice that. And
15 if I think that someone is going through the same kind of
16 turmoil internally that Ms. Sadler was externally, I am
17 going to take that into account. That is why we have
18 individual voir dire and that is why we have lawyer voir
19 dire in this case. I don't know any other way to handle
20 it.

21 Now, having said that, I am observing, as I did
22 earlier today, that the government seemed to want to have
23 women jurors. So if you think I am excusing too many women
24 jurors and leaving on too many male jurors, maybe you ought
25 to let me know that. Because my impression, from what I

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1 saw, was that the government wanted to have young or old
2 women on the jury. They said that.

3 MR. KAROWSKY: Your Honor, I understand. I
4 didn't say that for any purpose relative to sex or racism.
5 I think the only reason I am raising that is I think it
6 takes a little bit longer with a white male, to have the
7 Court see the nuances, for all of us to see the nuances,
8 than it takes, maybe for a 22-year-old woman.

9 What I am suggesting is nobody wants to be here at
10 ten after six at night. It just may take that much longer.
11 I don't think we were repetitious with Mr. Sherwood. We

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12 were trying to nail it down. The reason for my comment, I
13 think it takes just as much time as we are giving it. I
14 don't see that we are --

15 THE COURT: Then I am going to make this
16 observation. The woman who said she was getting old was 58
17 years old. I don't have it in me to go for two weeks until
18 6:00 every day, so we are going to have to make some kind
19 of adjustment here, if you are telling me that you don't
20 think it's a fair to cut you any shorter than that. By the
21 time we get to next week, we are probably going to have to
22 make some adjustments, because neither the Court Reporter
23 nor I can go those hours. The Court Reporter we have right
24 now is substituting for our regular reporter, who had
25 appendicitis, who had her appendix out over the New Year's

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1 holiday. She can't take long hours, either. She is
2 recovering from that.

3 MS. MARKS: Can I say something? Instead of
4 imposing a time limit today, do you think we can just get
5 through Friday, because this is new for all of us. Three
6 of us are sort of refining the questions we need to ask.
7 We are sort of still seeing what works. But I suspect, and
8 I don't want to speak for Ms. White, but the government
9 appears to be doing a little bit of the same. So, in fact,
10 does the Court.

11 Maybe this will go faster as we get a little bit

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12 better at it.

13 THE COURT: I can do that. My suggestion was not
14 that I put arbitrary, intransigent time limits on you, but
15 that I set a time limit that you think is comfortable and
16 that you try to abide by it, with the understanding that it
17 is not cast in cement.

18 MS. MARKS: That is fine with me. I
19 interpreted Mr. Karowsky's remarks to mean what he
20 essentially said; it wasn't about you at all.

21 THE COURT: I think it was about white males,
22 which I don't think is a proper comment.

23 MS. MARKS: It may take us longer to figure out
24 how to do this. That's all.

25 THE COURT: Okay. Then I will just take it easy

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1 for tomorrow. See where we end up at about 4:00. And
2 then, if we don't come any closer to finishing than that,
3 then maybe we will have to have a readjustment of who comes
4 in on what day.

5 MS. MARKS: Or maybe we can revisit the time
6 constraints. I think we might be speedier tomorrow.

7 MR. LOCKE: May we leave these materials here?

8 THE COURT: Yes.

9 (Court adjourned at 6:13 p.m.)

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3 STATE OF CALI FORNIA)
4 COUNTY OF SACRAMENTO) ss.

5
6 I, ESTHER F. SCHWARTZ, certify that I was the Official
7 Court Reporter, pro tem, and that I reported verbatim in
8 shorthand writing the foregoing proceedings; that I
9 thereafter caused my shorthand writing to be reduced to
10 printed form, and the pages numbered 134 through 304,
11 inclusive, constitute a complete, true, and correct record
12 of said proceedings:

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14 COURT: U. S. DISTRICT - EASTERN CALIFORNIA

15 JUDGE: WILLIAM SHUBB

16 CAUSE: USA V. La BRECQUE

17 DATE: WEDNESDAY, JANUARY 2, 2008

18

19 IN WITNESS WHEREOF, I subscribe this certificate at

20 Sacramento, California, on this 2nd of June, 2009.

21

/s/ ESTHER F. SCHWARTZ
CSR NO. 1564

22

23

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2 I certify that the foregoing is a correct transcript
3 from the record of proceedings in the above-entitled matter.

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6

/s/ Kathy L. Swinhart
KATHY L. SWINHART, CSR #10150

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